A and B Lists.

A coelo usque and centrum. [From heaven to the centre of the earth.] In principle, the extent of the right of the owner of property.

A.R. (Anno Regni). [In the year of the reign.]

a tempore cujus contrarii memoria non existet. [From a time of which there is no memory to the contrary.] See MEMORY.

a verbis legis non est recedendum. [You must not vary the words of a statute.]

Ab initio. [From the beginning] When an authority or licence is given to a person by the law, and he abuses it, he becomes a trespasser ab initio, and everything done by him in purported exercise of such authority or licence becomes wrongful. See Six Carpenters’ Case (1611) 1 Smith L.C. See NULLITY.

ab intestate. [From an intestate.]

abandonment. The relinquishment of an interest, claim, or thing. In marine insurance, when there is a constructive total loss (q.v.) the insured may abandon the subject-matter insured to the insurer or underwriter by giving notice of abandonment to him within a reasonable time. Thereupon the insured is entitled to the insurance moneys, and the insurer or underwriter to the subject-matter insured.

abatement. A reduction, allowance or rebate. An abatement pro rata is a proportionate reduction of the amount of each of a number of debts or claims, as where a fund or estate is insufficient for payment of all in full.

abbreviation placitorum. A collection of cases decided in the superior courts from the reign of Richard I down to the commencement of the Year Books.
**abduction.** The wrongful taking away of a person. Under the Sexual Offences Act, 1956, it is a misdemeanor (1) unlawfully to take out of the possession and against the will of any person having the lawful care of her, any unmarried girl being under the age of sixteen (s. 20), irrespective of whether the defendant believes her to be, or she appears to be, over that age; (2) to take any unmarried girl under eighteen out of the possession and against the will of her lawful guardian with the intent that she shall have illicit sexual intercourse with a man or men, unless the defendant has reasonable cause to believe she is over eighteen (s. 19).

It is a felony (1) to take away or detain against her will any woman of any age with intent to marry her, or have sexual intercourse with her, or to cause her to be married to or have sexual intercourse with any other person either by force or for the sake of her property or expectations of property (s. 17)/ (2) to take away or detain any such woman, being under twenty-one out of the possession and against the will of her parent or guardian (s. 18).

The abduction of female defectives is a misdemeanour (s. 21).

**abridgment.** A digest of the laws of England, e.g., Viner’s, 1741.

**abscond.** Secretly to go away, or evade the law. See ACT OF BANKRUPTCY (2).

**absence.** If a person has not been heard of for seven years, and the circumstances are such that, if alive, he would have been heard of, the presumption of death arises, but not as to the date of death (Re Phene’s Trusts (1869) 5 Ch, App. 139). The court will, however, order that death be presumed at any time if sufficient evidence is shown. See also BLGAMY.

**absoluta sentential expositore non indigent.** [When you have plain words capable of only one interpretation, no explanation of them is required.]

**accident.** In the popular and ordinary sense, accident denotes an unlooked-for mishap or an untoward event which is not expected or designed (Fenton v. Thorley [1903] A. C. 443 at 448, 451) Anything that happens without foresight or expectation, or is an unusual effect of a known cause (Murray’s Oxford Dictionary). Inevitable accident means an accident the consequences of which were not intended and could not have been foreseen by the exercise
of reasonable care and skill. It is, in general a ground of exemption from liability in tort. See ACT OF GOD.

In equity, accident means such an unforeseen event, misfortune, loss, act, or omission as is not the result of any negligence or misconduct by the party applying for relief. If a deed or negotiable security were lost, equity would enforce the plaintiff’s rights under the document on his giving, if necessary, a proper bond of indemnity to the defendant.

In criminal law, on a charge of murder, the defence of accident may be a complete defence, or may justify a conviction for manslaughter only.

**accomplice.** Any person who, either as a principal or as an accessory, has been associated with another person in the commission of any offence. The evidence of an accomplice is admissible, but the judge must warn the jury of the danger of convicting on such evidence unless corroborated, and if this warning is omitted a conviction may be quashed. See ACCESSORY; CORROBORATION.

**accredit.** To furnish a diplomatic agent with papers, called credentials or letters of credit, which certify his public character.

**accusare nemo se debet; accusare nemo se debet nisi coram deo.** [No one is bound to accuse himself except to God.] A witness is not bound to answer any question which in the opinion of the court would incriminate him.

**acquiescence.** Assent to an infringement of rights, either expressed, or implied from conduct, by which the right to equitable relief is normally lost. See LACHES.

**acta exteriora indicant interiora secreta.** [External actions whom internal secrets.] Intention may be inferred from a person’s acts.

**action personalis moritur cum persona.** [A personal action dies with the person.] No executor or administrator could sue or be sued for any tort committed against, or by, the deceased in his lifetime (except injuries to property); the right of action in tort was destroyed by the death of the injured or injuring party, because an action in tort was regarded originally
as purely punitive and only later as compensatory. The rule was largely abolished by the Law Reform (Miscellaneous Provisions) Act, 1934, which provided that on the death of a person all causes of action subsisting against or vested in him should survive against, or for the benefit of, his estate with the exception of: defamation, seduction, enticement of a spouse, and claims for damages for adultery.

**action.** A civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court. It does not include a criminal proceeding by the Crown (Judicature Act, 1925, s. 225; Ord. 1, r. 1).

In early times actions were divided into criminal and civil, the former being proceedings in the name of the Crown, and the latter those in the name of a subject.

“Action” generally meant a proceeding in one of the common law courts, as opposed to a suit in equity. Actions were divided into real, personal, and mixed: real (or feudal) actions being those for the specific recovery of lands or other realty; personal actions, those for the recovery of a debt, personal chattel, or damages; and mixed actions, those for the recovery of real property, together with damages for a wrong connected with it.

A plaintiff at common law had to sue by one or other of certain forms of actions or writs. They were: (I) on contract: (a) covenant, being on a deed alone; (b) assumpsit, being on a simple contract only; (c) debt, being either on a deed or on a simple contract; (d) scire facias, being on a judgment; (e) account; and (f) annuity; (II) in tort: (g) trespass quare clausum fregit, to real property, and trespass de bonis asportatis, to goods; (h) case; (i) trover; (j) detinue; and replevin; (III) the mixed action of ejectment.

The Common Law Procedure Act, 1852, provided that it should not be necessary to mention any form or cause of action in any writ of summons, and all forms of action are now abolished. See also ACTIONS REAL; ACTIONS SUCCESSIVE; EJECTMENT; PENAL ACTIONS.

**actus curiae neminem gravabit.** [An act of the court shall prejudice no one.]

**actus Dei nemini facit injuriam.** [The act of God prejudices no one.] See ACT OF GOD.

**actus legis nemini facit injuriam.** [The act of the law injures no one.]
actus non cacti reum, nisi mens sit rea. [The act itself does not constitute guilt unless done with a guilty intent.] See MENS REA.

ad diem. [To the day appointed.]
ad eundem. [To the same class.]
ad hoc. [For this purpose.]
ad idem. [Of the same mind; agreed.] See CONSENSUS AD IDEM.
ad interim. [In the meanwhile.]
ad litem. [For the suit.] See GUARDIAN (6).
ad quaestionem facti non respondent judices; ad quaestionem juris non respondent juratores. [The judge does not decide questions of fact and the jury do not decide questions of law.]
advalorem. [According to the value.] Duties which are graduated according to the value of the subject-matter taxed.

affinity. Relationship by marriage.

adjective law. So much of the law as relates to practice and procedure. (Bentham.)

adjournment. The suspension of the sitting of the court. See SINE DIE.

adjudication. (1) A judgment or decision of the court; e. g., the order which declares a debtor to be bankrupt. (2) The decision of the Commissioners of Inland Revenue as to the liability of a document to stamp duty.

administrative law. The law relating to the organization, powers and duties of administrative authorities (Dicey). The subordinate branch of constitutional law consisting of the body of rules which govern the detailed exercise of executive functions by the officers or public authorities to whom they are entrusted by the Constitution; for example, the law relating to Town and Country Planning.

administrator. A person appointed to manage the property of another, particularly the person to whom a grant of administration is made. See LETTERS OF ADMINISTRATION.

adolescens. [Roman Law.] A person between the ages of puberty (14 in boys, 12 in girls) and majority (25).
**adultery.** Voluntary sexual intercourse between persons of the opposite sex one of whom is married to a third party. Adultery as a ground for divorce or judicial separation requires that the respondent must have had sexual intercourse with a person other than the petitioner since the marriage.

Adultery was formerly a tort actionable by writ of trespass in an action of criminal conversation (q.v.), but now damages for adultery may be claimed by a husband only in proceedings in the Divorce Court (Matrimonial Causes Act, 1950, s. 30).

**adverse witness.** A witness adverse to the party examining him: he may with leave of the court be cross-examined by the party calling him.

**adversus extraneos vitiosa possession prodesse solet.** [Prior possession is a good title of ownership against all who cannot show a better.]

Advocate, Lord. The chief law officer of the Crown in Scotland.

**aedificatum solo, solo cedit.** [Wht is built on the land is to be regarded as having become part of the land.] See QUICQUID PLANTATUR SOLO, SOLO CEDIT.

**aequitas.** Equity (q.v.).

**aequitas sequitur legem.** [Equity follows the law.]

**affidavit.** A written statement in the name of a person, called the deponent, by whom it is voluntarily signed and sworn to or affirmed. It must be confined to such statements as the deponent is able of his own knowledge to prove, but in certain cases it may contain statements of information and belief with the sources and grounds thereof (ord. 38, r. 3). The parties to civil proceedings may agree that their case be tried upon affidavit (Ord. 38, rr. 25-30), and the court may order that any particular facts, or the evidence of any particular witness, shall be proved by affidavit (Ord. 37, r. 1; 38A, r. 8 (j)).

**affinity.** Relationship by marriage; the relationship between a husband and his wife’s kindred, and between the wife and her husband’s kindred; but there is no affinity between a person and the relations by marriage of his or her spouse.

**affirm.** (1) To elect to abide by a voidable contract; (2) to uphold a judgment; (3) to be allowed to give evidence without taking the oath, either on the ground that taking a no oath is contrary to the person’s religious belief, or that the person has no religious belief (Oahts
An affirmation may be made where it is not practicable to administer an oath as required by a person’s religious belief (Oaths Act, 1961).

affray. A common law misdemeanour which consists of the fighting of two or more persons in a public place to the terror of Her Majesty’s subjects.

affreightment. A contract made either by charter party or by bill or lading, by which a shipowner agrees to carry goods in his ship for reward. See also FREIGHT.

agent. A person employed to act on behalf of another. An act of an gent, done within the scope of his authority, binds his principal. If a person professes to contract as agent on behalf of another as principal, although without the latter’s authority, the latter may subsequently retify the contract. Otherwise if a person represents himself to have authority to act as agent when he has none, he is liable for breach of an implied warranty of authority (Collen v. Wright (1857) 7 E. & B. 301).

agnates. Kinsmen related through males. In Roman law agnati were persons so related to a common ancestor that if they had been alive together with him, they would have been under his potestas. See COGNATES.

alderman (originally Ealdorman (q.v.)). A senior member of the governing body of a city, borough or country.

aleatory contract. A wagering contract.

alias (alias dictus [otherwise called]). A false name.

alibi. [Elsewhere.] A defence where an accused alleges that at the time when the offence with which he is charged was committed, he was elsewhere. See, e.g., R. v. Littleboy [1934] 2 K.B. 408.

alien. At common law an alien is a subject of a foreign state who was not born within the allegiance of the Crown. “Alien” now means a person who is not a British subject, a British protected person or a citizen of the Republic of Ireland (British Nationality Act, 1948, s. 32 (1)).
The admission and deportation of aliens is governed by the Aliens Order, 1953, made under the Aliens Restriction Acts, 1914 and 1919. Leave may only be given to an alien to land in the United Kingdom if he complies with certain conditions, e.g., that he is able to support himself and his dependants.

An alien has full proprietary capacity, except that he may not own a British ship; nor may he exercise the franchise. An alien may be employed in civil capacity under the Crown (Aliens’ Employment Act, 1950). See DEPORTATION; NATURALISATION.

**alimony pendent elite.** [Pending suit.] See ALIMONY.

**aliquis non debet esse judex in propria causa quia non potest esse judex et pars.** [No man ought to be a judge in his own cause, because he cannot act as a judge and at the same time be a party.]

**allegation.** A statement or assertion of fact made in any proceeding, as for instance, in a pleading; particularly a statement or charge which is, as yet, unproved.

**allotment.** (1) The allocation or appropriation of property to a specific person (or persons) called the “allottee”, e.g., the partition of land held jointly among the several owners.

(2) The appropriation to an applicant by a resolution of the directors of a company of a certain number of shares in the company, in response to an application. This is generally done by sending to the applicant a letter of allotment, informing him of the number of shares allotted to him. A return of allotments has to be made to the Registrar of Joint Stock Companies (Companies Act, 1948, ss. 47-52.)

(3) Smallholdings allotted to the “labourig poor.” See the Allotments Acts, 1908 to 1950.

**alluvio.** [Roman Law.] Alluvion: an imperceptibly gradual deposit of soil from a river or the sea.

**alteration.** A material alteration of an instrument, e.g. an alteration of the date of a bill of exchange whereby payment would be accelerated, invalidates the instrument. Alterations in deeds are presumed to have been made before execution; in wills, after, and are ignored unless duly executed or proved to have been made in fact before execution of the will.
amalgamation. The merger of two or more companies or their undertakings. see Companies Act, 1948, ss. 206, 208.

ambiguity. A double meaning. A patent ambiguity is one which is apparent on the face of the instrument, as where a blank is left. A latent ambiguity is one not apparent on the face of the instrument, as where a testator bequeaths property to his niece, Jane, and it is proved that he had two nieces so named. Parol evidence is admissible to explain a latent, but not (in general) a patent, ambiguity.

ambulatoria est voluntas deuncti usque ad vitae supremum exitum. [The will of a deceased person is ambulatory until the latest moment of life.]

amicus curiae. [A friend of the court.] One who calls the attention of the court to some point of law or fact which would appear to have been overlooked; usually a member of the Bar. On occasion the Law Officers are requested or permitted to argue a case in which they are not instructed to appear.

amnesty. A pardon for offences granted by an Act of Parliament which is originated by the Crown instead of by the House of Commons.

ancestor. Any of those relatives from whom descent by blood may be traced, whether through the father, or mother; the person prior to 1926, to whose property an heir succeeded on intestacy. By the fifth rule of intestate succession to realty (based on the Inheritance Act, 1833), on failure of lineal descendants or issue of a purchaser, the land “descended” to his nearest lineal ancestor.

ancipitus usus. [Of doubtful use.]
animus quo. [The intention with which.]

annuity. A yearly payment of a certain sum of money. If charged on real estate it is commonly called a rentcharge.
Annuities given by will re pecuniary legacies payable by installments, and where the will directs the purchase of an annuity for A for life, A is entitled to take the purchase-money instead.

**anti-date.** To date back. See Bills of Exchange Act, 1882, s. 13.

**apprentice.** One who binds himself to serve and learn for a definite time from a master, who on his part covenants to teach his trade or calling. An infant’s contract of apprenticeship, if substantially for his advantage, is binding on him.

**approver.** An accomplice who turns Queen’s evidence (q.v.).

arbitration. The determination of disputes by the decision of one or more persons called arbitrators: e.g., in commercial matters. Differences between the arbitrators are decided by an umpire.

An agreement to refer a dispute to arbitration is called an arbitration agreement, and if legal proceedings are instituted in contravention of the submission the defendant may, but only before delivering pleadings or taking any other step in the proceedings, apply to the court to stay them. The decision of an arbitrator is called an award, which can be appealed against to the High Court on the ground of mistake in law. A valid award can be enforced by legal process. The court may remove an arbitrator for misconduct or set aside his award. The Arbitration Act, 1950, is a consolidating Act. (See Ord. 88).

**argumentum ab inconvenienti plurimum valet in lege.** [An argument based on inconvenience is of great weight in the law.]

**arrears.** Debts not paid at the due date; e.g. income tax.

**arson.** At common law, the felony of maliciously setting fire to the dwelling-house or outhouse of another; extended by the Malicious Damage Act, 1861, to other building and property as therein specified.
If is a felony punishable by death willfully and maliciously to set on fire H.M. warships, dockyards, etc. (Dockyards, etc., Protection Act, 1772, s. 1) See also Naval Discipline Act, 1866, s. 34.

**articles.** Clauses of a document; hence the word “articles” sometimes means the document itself; e.g., articles of agreement, articles of partnership, etc.

**assault.** The unlawful laying of hands on another person, or an attempt or offer to do a corporal hurt to another, coupled with an apparent present ability and intention to do the act. Assault is a crime punishable under the Offences against the Person Act, 1861. Common assaults may be dealt with by courts of summary jurisdiction; the more serious forms of assault are indictable offences.

Assault is also a tort consisting of an act of the defendant which causes to the plaintiff reasonable fear of the infliction of a battery (q.v.) on him by the defendant.

**assay.** The testing of the quality of an article, e.g., bread or silver, or the accuracy of weights and measures.

**assets.** Property available for the payment of debts. Real assets are real property, and personal assets are personal property. Legal assets comprise everything which an executor takes by virtue of his office, and with which he would have been charged in an action at law. Equitable assets are such as could only be reached in a court of equity.

From January 1, 1926, the rule is that real and personal estate, whether legal or equitable, of a deceased person, together with property over which a general power of appointment if exercised by will, are assets for payment of debts whether by simple contract or specialty 9s. 32, Administration of Estates Act, 1925).

Realty did not vest in the personal representatives of the deceased t common law, and was not liable for debts, unless “assets by descent” (q.v.). Personality only was available to the creditors for the payment of debts. But if Realty had been devised upon trust to pay debts, or charged with the payment of debts, then it was available in equity by means of a suit for administration. The Administration of Estates Act, 1833, made all Realty available in equity,
and Part I of the Land Transfer Act, 1897, vested the realty in the personal representatives. On deaths since 1925 the real and personal estate of a deceased vests in the personal representatives by virtue of the Administration of Estates Act, 1925, and all beneficial property is now assets for payment of debts (idid. s. 32). See ADMINISTRATION OF ESTATES.

In commerce, assets are divided into fixed or capital assets, and current or circulating assets. The former are intended to be held and used in the business; the latter are intended to be realized in the course of trading.

**assignee.** A person to whom an assignment is made. A creditor’s assignee was the equivalent of the modern trustee in bankruptcy.

**association, memorandum of.** Seven or more persons (or, for a private company, two or more persons) may by subscribing their names to a memorandum of association and otherwise complying with the statutory requirements as to registration, form an incorporated company with or without limited liability (Companies Act, 1948, s. 1). The memorandum must state 9a) the company’s name, (b) the situation of the registered office, (c) its objects. The memorandum of a company limited by shares or guarantee must also state that the liability of its members is limited, and if the company has a share capital, the memorandum must state its amount, and every subscriber must subscribe it with the number of shares he takes (ibid., s. 2). The memorandum cannot be varied by the company itself (except in special circumstances), but only by application to the court.

The memorandum of association delimits the powers of the company. See ULTRA VIRES.

**asylum.** Originally a place in which there was safety from pursuit, then a place for the reception and treatment of the insane. By the Mental Treatment Act, 1930, s. 20, asylums were to be called “mental hospitals.”

**attest.** To witness any act or event, such as, e.g., the signature or execution of a document, e.g., a will (q.v.).
attorney. (1) A person appointed by another to act in his place or represent him (see POWER OF ATTORNEY). (2) Formerly persons admitted to practice in the superior courts of common law: they represented suitors who did not appear in person. Since the Judicature Act, 1873, they are entitled “Solicitors of the Supreme Court.”

audi alteram partem. [Hear the other side.] That no one shall be condemned unheard, is one of the principles of natural justice (q.v.).

authority. (1) Delegated power; a right or rights invested in a person or body. An authority is a body charged with the power and duty of exercising prescribed functions; e.g., a local planning authority. A person vested with authority is usually termed an agent, and the person for whom he acts, the principal. A bare authority is an authority which exists only for the benefit of the principal, which the agent must execute in accordance with his directions. An authority coupled with an interest is where the person vested with the authority has a right to exercise it, partly or wholly, for his own benefit. A mere authority is revocable by the grantor at any time; one coupled with an interest is not. See AGENT.

autre droit, in. [In right of another.] e.g., an executor holds the deceased’s property in right of the persons entitled to his estate.

autre vie. [The life of another] See TENANT PUR AUTRE VIE

autrefois acquit. [Formerly acquitted.] A special plea in bar to a criminal prosecution that the prisoner has been already tried for the same offence before a court of competent jurisdiction and has been acquitted. The plea can only succeed where the accused was in jeopardy on the first proceedings; that is, the merits of the prosecution’s case have been gone into, so that the decision of the court was that the evidence was insufficient to support the prosecution.

autrefois convict. [Formerly convicted] A special plea in bar to a criminal prosecution, by which the prisoner alleges that he has been already tried and convicted for the same offence before a court of competent jurisdiction.
**award.** The finding or decision of an arbitrator upon the submission in an arbitration. It must follow the submission, be certain, final, reasonable, legal, possible, and dispose of all the differences submitted to arbitration. By leave, an award may be enforced in the same manner as a judgment or order, and judgment may be entered in terms of the award (Arbitration Act, 1950, s. 26).

**B**

**backwardation.** A percentage paid by a seller of stock, deliverable upon a Stock Exchange account day, for the privilege of delaying delivery until the next account day. Compare CONTANGO.

**bail.** An accused person is admitted to bail when he is released from the custody of officers of the law and is entrusted to the custody of persons known as his sureties, who re bound to produce him to answer, at a specified time and place, the charge against him, and who, in default of so doing, are liable to forfeit such sum as is specified when bail is granted. Bail are sureties for the accused, who enter into recognizance for his appearance, he also entering into a similar recognizance. Bail therefore means the contract whereby the accused is released to his sureties, and also sureties themselves. A contract, whether by a person bailed or by a third party, to indemnify a surety is void as being against public policy and is a misdemeanour.

It is in the discretion of a justice of the peace to admit to bail, except for treason, when bail can only be granted by a Secretary of State or a judge. In the case of misdemeanours (with certain exceptions) bail is compulsory. The justices may dispense with sureties and release the accused upon his own recognizance. Bail may be granted by the Queen’s Bench Division for any indictable offence, although it has been refused by a justice (ord. 79, r. 9)

Under the Magistrates’ Courts Act, 1952, s. 38, the police in general are given power to take bail, where arrest is made without warrant, and where the inquiry into the case cannot be completed forthwith. See the Criminal Justice Act, 1948, ss. 37, 38.
In Admiralty proceedings, where a ship or other property has been arrested, the owner may generally have it released on giving bail, with two sureties, to an amount equal to the value of the property.

**baillee.** A person to whom the possession of goods is entrusted by the owner but not with the intention of transferring the ownership.

Any person is a bailee, who, otherwise than as a servant, either receives possession of a thing for another, or holds possession of a thing for another, upon an undertaking with that other, to keep and return or deliver to him the specific thing according to his directions.

A bailee has a special property or qualified ownership in the goods bailed, and any recover from a person who wrongly injures the goods the amount of the injury as damages, which (to the extent they exceed his own interest) are held by the bailee on account of the bailor.

The bailment is determined, and the right to possess the goods reverts to the bailor, if the bailee does an act entirely inconsistent with the terms of the bailment. Loss caused by an act not authorized by the terms of the bailment, thought not otherwise negligent, will fall on the bailee, unless inevitable in any case. A bailee is bound to take care of the goods bailed and is liable for negligence, in general, as follows:

1. Where the bailment is entirely for the benefit of the bailor, e.g., a gratuitous deposit, the bailee is only liable for gross negligence; i.e., culpable default, as in failing to take care to avoid a foreseen risk.
2. Where the bailment is solely for the benefit of the bailee; e.g., a gratuitous loan of chattels, the bailee is liable even for slight negligence, i.e., the omission of the care vigilant person takes of his own goods.
3. Where the bailment is for the common benefit of both bailor and bailee; e.g., pawn, or warehousing for hire, the bailee is bound to use ordinary care, and is liable for ordinary negligence, i.e., failure to take the care which an ordinary prudent man takes of his own goods.

A bailee whose original possession was innocent, could not be convicted of larceny at common law unless and until he committed a trespass by breaking buld, Now, by the Larceny
Act, 1916, s. 1 (1), a bailee who fraudulently converts to his on use, or to the use of any person other than the owner, anything capable of being stolen which he possesses as bailee, is guilty of a felony. See BAILMENTS.

**bailments.** A delivery of goods on a condition, expressed or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they are bailed shall be answered. Bailments were divided into six classes by Holc.J. ion his celebrated judgment in coggs v. Bernard ((1703) 2 Ld. Raym. 909; 1 Sm. L. C. 175) substantially as follows:

1. **Depositum;** delivery of delivery of goods by one man to another to keep for the use of the bailor, gratuitously.
2. **Commodatum;** a gratuitous loan of goods or chattels.
3. **Locatio rei;** a loan of goods to the bailee to be used by him for hire.
4. **Vadium, Pawn or Pledge;** delivery of goods or chattels to another as security for money borrowed of him by the bailor.
5. **Lacatio operas, faciendi;** delivering of goods or chattels to be carried, or for something to be done to them for reward.
6. **Mandatum;** delivery of goods or chattels to be carried or for something to be done to them, gratis. See BAILEE; BAILOR.

See also Disposal of Uncollected goods Act, 1952.

**banishment.** The compulsory quitting and forsaking of the realm; it might arise by abjuration (q.v.) or by authority of Parliament.

**bankrupt.** A debtor whose estate is vested in a trustee for division amongst his creditors, pursuant to an order of the court adjudicating him bankrupt.

**bankruptcy.** Proceedings in the High Court (or certain country courts) for the distribution of the property of an insolvent person among his creditors, and to relieve him of the unpaid balance of his liabilities. Only traders could be made bankrupt until the Bankruptcy Act, 1861, s. 69, made all debtors subject to bankruptcy proceedings. Married women could be adjudicated bankrupt only when trading, whether separately from their husbands or not (Bankruptcy) Act, 1914, s. 125 (1)). But by the Law Reform (Married Women and
Tortfeasors) Act, 1936, s. 1, a married woman is subject to bankruptcy proceedings as if she were a feme sole.

Bankruptcy proceedings commence with the commission of an act of bankruptcy (q.v.), followed by a petition to the court for a receiving order for the protection of the estate. The property of the debtor then vests in an official receiver. A meeting of the creditors is held, and the debtor must submit a statement of affairs to the official receiver. The debtor is publicly examined before the Registrar, and if no composition or scheme of arrangement is approved, he is adjudged bankrupt and his property vests in a trustee and becomes divisible among his creditors. Bankruptcy is annulled by an order of discharge (see the Bankruptcy Act, 1914, and the Bankruptcy (Amendment) Act, 1926). In the High court, bankruptcy business is assigned to the Chancery Division. See also TRUSTEE IN BANKRUPTCY.

**bar.** A partition across a court of justice. Only Queen’s Counsel, solicitors (as officers of the court) and parties are allowed within the bar. A trial at bar is a trial by a jury before a full court (three or four judges) instead of before a single judge as at Nisi Prius.

The Bar means the professional body of barristers.

In the Houses of Lords and Commons the bar forms the boundary of the House, and therefore all persons who have to address the House appear at the bar for that purpose.

To bar a right is to destroy or end it, e.g., bar an entail, or a debt under the Statutes of Limitation.

**Bar Council.** The General Council of the Bar, the body which is the authority on the etiquette and practice of the Bar. It has a professional conduct committee. It has no disciplinary power, but brings matters to the notice of the Benchers of the Inns of Court. Letters to the Bar Council have only qualified privilege.

**baron.** [Man.] “Baron and feme” meant husband and wife.

Before the Judicature Acts, judges of the Court of Exchequer were called barons and the chief judge of that court was styled the Lord Chief Baron of the Exchequer. See BARONY.

**barrister.** A member of one of the four Inns of Court who has been called to the Bar by his Inn. Barristers have the exclusive right of audience in the High Court and superior courts. A
barrister’s professional conduct is under the control of the Benchers of his Inn. Barristers intending to practice must spend twelve months as pupils. His fees are an honorarium, and no action lies to recover them, nor is he liable for negligence in the performance of his professional duties. See also Barristers (Qualification for Office) Act, 1961.

**bastard.** A child born out of wedlock: an illegitimate child. At common law a bastard has no parents and cannot take property as an heir-at-law or next-of kin through them. But he can found a family of his own. He can leave real property by will (Law of Property Act, 1925, s. 178). Upon the making of an affiliation order, the putative father becomes liable to contribute to the support of his bastard child, of which normally the mother has the custody with the liability to maintain the child. See LEGITIMACY.

**bastard eigne.** An elder son born before marriage.

**banch.** The judges of a court of law.

**bequest.** A gift of personal property by will. A residuary bequest is a gift of the residue of the testator’s personal estate. A specific bequest is a bequest of property of a certain kind, e.g., a watch.

**bigamy.** The offence committed by any person who, being married, and while the marriage subsists, marries any other person during the life of the former wife or husband, whether the second marriage takes place in England or elsewhere. But it is a good defence that the former wife or husband has been absent for seven years at the date of such marriage, and has not been known to be living during that time (Offences against the Person Act, 1861, s. 57). Even if the seven years have not elapsed, bona fide belief of death on reasonable grounds is a good defence (R. v. Tolson, 23 Q.B.D. 168). But not a mistaken belief that the previous marriage has been dissolved (R.v. Wheat and Stocks [1921] 2 K.B. 119).

**bill.** A letter or writing. (1) A parliamentary measure which on receiving the Royal Assent, becomes an Act of Parliament; (2) a document by which proceedings were formerly commenced, e.g., a Bill in Chancery.

**bill of exchange.** A form of negotiable instrument. “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 on demand, or at a fixed or determinable future time, a sum
certain in money, to, or to the order of, a specified person, or to bearer” (Bills of Exchange
Act, 1882, s. 3).

A bill is given by the drawer, and addressed to the drawee, who becomes the acceptor by
writing his name across the face of the bill. The bill is payable to the payee, who must be
named or indicated with reasonable certainty (ibid., s. 7 (1)). If the payee is a fictitious or
non-existing person the bill may be treated as payable to bearer (ibid., s. 7 (3)).

bill of lading. A document signed and delivered by the master of a ship to the shippers on
goods being shipped. The “mate’s receipt” is the acknowledgment of the actual taking on
board ship of the goods. The bill of lading specifies the name of the master, the port and
destination of the ship, the goods, the consignee, and the rate of freight. Copies are kept by
the master, the shipper and the consignee. It is a document of title transferable by
endorsement and delivery, giving the holder the right to sue thereon, but it is not a negotiable
instrument, so that a transferee obtains no better title than the transferor has. See Carriage of
Goods by Sea Act, 1924.

Bill of Rights. The Declaration delivered by the Lords and Commons to the Prince and
Princess of Orange and afterwards enacted as the statute 1 will. & Mary sess. 2, c. 2, which
provided (inter alia) that:

(1) The suspending power, when exercised by the Crown without the assent of
Parliament, is illegal;

(2) The dispensing power, as of late exercised, is illegal;

(3) Levying money by prerogative is prohibited;

(4) The subjects have a right to petition the Crown, and all commitments for so
petitioning are illegal;

(5) Raising or maintaining a standing army within the Kingdom in time of peace is
illegal, if done without the assent of Parliament;

(6) Speech in Parliament is to be free;

(7) Excessive bail, excessive fines, etc., ought not to be required or imposed; and

(8) The Protestant succession to the throne of England to be ensured. See ACT OF
SETTLEMENT.
**blockade.** In international law, an act of war carried out by the warships of a belligerent detailed to prevent access to or departure from the enemy’s coast or ports. The penalty for breach of blockade is confiscation, but it must be shown: (1) that the blockade was effective; (2) that the ship alleged to have violated the blockade had notice thereof; and (3) that she made ingress or egress in disregard of the blockade.

In the world wars of 1914-1918 and 1939-1945, the “navicert” system (whereby only ships carrying papers issued by the Allied Powers could pass the contraband control) largely superseded the traditional form of blockade.

**bona fide.** In good faith, honestly, without fraud, collusion or participation in wrongdoing.

**bond.** A single bond is a contract under seal to pay a sum of money (a common money bond), or a sealed writing acknowledging a debt, present or future. A double or conditional bond is where a condition is added that if the obligor does or forbears from doing some act the obligation shall be void. The person who binds himself is called the obligor, and the person in whose favour the bond is made is called the oblige. The bond usually consists of (i) the obligation or operative part, by which the obligor binds himself to pay the money; (ii) any recitals which may be necessary to explain the nature of the transaction; and (iii) the condition, which sets out the acts on the performance of which the bond or obligation is to cease to be of effect. Voluntary bonds are bonds given without valuable consideration.

Formerly the common law rule was that on non-performance of the condition of a bond on the day fixed the penalty was recoverable by the oblige in full; but equity gave relief against penalties, and then by statute the oblige was prevented from recovering at law more than the sum or damages actually due or sustained (Ord. 53).

A bond is also an instrument of indebtedness issued by companies and governments to secure the repayment of money borrowed by them.

**bonus shares.** If a company declares a bonus out of undivided capitalized profits and allots to its shareholders in satisfaction of the bonus unissued shares in the company as fully paid up, the shares so allotted are capital and not income in the shareholders’ hands (Inland Revenue Commissioners v. Blott [1921] 2 A.C. 171). Similarly unissued debentures may be issued as
bonus debentures. Bonus shares or debentures can be paid for out of profits available for dividend if the articles of association so provide.

**borough.** A town incorporated by Royal Charter with a common seal, the right to hold lands and the right to contract, sue and be sued in the name of the Mayor, Alderman and Burgesses of ---.

It is subject to the Municipal Corporations Act, 1882.

**bounty.** Moneys payable by the Crown, either as rewards’ e.g., to the officers and crew of a Queen’s ship, or as inducements to exporters, etc., or by way of charity.

**breach.** The invasion of a right, or the violation of a duty.

**breach of contract.** A breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It also entitles him to treat the contract as discharged if the other party renounces the contract, or makes its performance impossible, or totally or substantially fails to perform his promises. An anticipatory breach of contract is one which is made before the time for performance has arrived.

**breach of trust.** An improper act, neglect or default on the part of a trustee in regard to his trust, either in disregard of the terms of the trust, or the rules of equity. The measure of the trustee’s liability is the loss caused thereby to the trust estate. Any profit accruing from a breach of trust; e.g., improper speculation or trading with the trust assets, belongs to the trust estate.

**broker.** A mercantile agent for the purchase and sale of goods, stocks and shares, policies of insurance, etc. A broker sue or be sued on a contract unless he signs a written memorandum with his own name.

**brothel.** A common bawdy house or a disorderly house: one used for purposes of fornication by both sexes, but not one so used by one woman only. Under the Sexual Offences Act, 1956, it is an offence to keep a brothel, or to let premises for use as a brothel, or to permit them to be used as such (ss. 33-36). This is commonly a breach of covenant in a lease, which breach is incapable of remedy under s. 146, Law of Property Act, 1925.
Budget. The annual statement made by the Chancellor of the Exchequer to the House of Commons soon after the commencement of the government financial year which begins on April 1, containing the estimates of the national expenditure for the year, and proposals as to the taxes necessary to raise the amount required. It is followed by the Budget resolutions proposing the new taxation for the year, which are later embodied in the annual Finance Act.

bull. One who buys stocks or shares intending not to take delivery but to resell at a higher price.

burglary. Breaking and entering a dwelling-house by night with intent to commit a felony; or entering a house with like intent, and breaking out by night; or committing a felony in a house and then breaking out (Larceny Act, 1916, s. 25).

“Night” is between 9 p.m. and 6 a.m. (ibid., s. 46) See HOUSEBREAKING.

by-laws of bye-laws. Rules made by some authority (subordinate to the Legislature) for the regulation, administration or management of a certain district, property, undertaking, etc., and binding on all persons who come within their scope. By-laws are the means by which local authorities exercise their regulative functions; e.g., under the Public Health Acts. Such by-laws usually require confirmation by the Minister of Health, or the Home Secretary, as the case may be. To be valid a by-law must be *intra vires*, reasonable in itself, certain in its terms and must not be retrospective or repugnant to the general law of the land. It must be published.

C

C.I.F. [Cost, insurance, freight.] A contract for the sale of goods where the seller’s duties are (1) to ship at the port of shipment within the time named in the contract goods of the contract description; (2) to procure on shipment a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract; (3) to insure the goods upon the terms current in the trade which will be available for the benefit of the buyer; (4) to make
out an invoice of the goods; (5) to tender to the buyer the bill of lading, the invoice and the policy of insurance. It is the duty of the buyer to take up these documents and pay for them.

Cabinet. The committee or council of the Ministers of the Crown, presided over by the Prime Minister, and consisting of the political heads of the Government Departments and other officers, all of whom are members of the Privy Council. It is the supreme executive in the British constitution, but its existence rests upon convention, not law, except that it has been recognized by the Ministers of the Crown Act, 1937, which provided for salaries for Cabinet Ministers. It first emerged in the time of Charles II as a “meeting of His Majesty’s Servants.”

In theory the Cabinet is collectively responsible for the whole policy of the government, but if the policy of a particular Minister is disowned, that Minister alone resigns. In modern times the Cabinet has been divided into the Cabinet proper, consisting of the senior Ministers, and Ministers of Cabinet rank.

cadit quaestio. [The matter admits of no further argument.]
caeteris paribus. [Other things being equal.]
camera. [Chamber.] See IN CAMERA.

canon. (1) A rule of the canon law, or ecclesiastical law. It is sometimes used as meaning a rule of the ordinary law; e.g., the canons of descent. (2) A minor ecclesiastical dignitary, member of the bishop’s advisory council, who assists the dean.

capias. [That you take.] A writ for the arrest of the person named therein.
capias and audiendum judicium. A writ to summon a defendant in a criminal prosecution to court to hear judgment pronounced against him.

capias and respondendum. A writ issued for the arrest of a person against whom an indictment for a misdemeanour has been found, in order that he might be arraigned. Abolished by the Crown Proceedings Act, 1947 (1st Sched.).

capias ad satisfaciendum, or ca. sa.; a writ for the arrest of the defendant in a civil action when judgment had been recovered against him for a sum of money and had not been satisfied.
**capital punishment.** Punishment of death, awarded for treason and the capital felonies; vis.: (1) capital murder; unless the convict be under eighteen (Criminal Justice act, 1948), or a woman found to be pregnant (judgment of Death (Expectant Mothers) Act, 1931). (2) Assault with attempt to murder or act endangering life committed in connection with attempted piracy (Piracy Act, 1937, c. 88). (3) Destruction, or attempted destruction of royal arsenals, dockyards, magazines, stores or ships (Dockyards, etc., Protection Act, 1772, s. 1). Execution is by hanging, which must take place within the prison where the offender is confined in the presence of the sheriff, gaoler, chaplain, and surgeon. See MURDER.

Under the Naval Discipline Act, and under the Army Act, sentence of death may be passed by courts martial on offenders serving in the Navy and Army respectively for specified offences.

**capitulations.** Agreements, concluded between Christian States on the one hand and non-Christian countries on the other hand, under which certain immunities and privileges were secured to subjects of the Christian State while in the territories of the non-Christian State. These subjects formed an extra-territorial community subject to the laws of their own country, and outside the jurisdiction of the local law.

**cargo.** Goods shipped for carriage.

**carrier.** One who has received goods for the purpose of carrying them from one place to another for hire, either under a special contract; i.e. as a bailee for reward, or as a common carrier.

**carrier, common.** One who, by profession to the public, undertakes for hire to transport from place to place, either by land or water, the goods of such persons as may choose to employ him. He is bound to convey the goods of any person who offers to pay his hire, and he is an insurer of goods entrusted to him; that is he is liable for their loss or injury, in the absence of a special agreement or statutory exemption, unless the loss or injury was caused by the act of God or the Queen’s enemies.

The Carriers Act, 1830, provided (1) that no carrier by land is to be liable for loss of or injury to certain valuable descriptions of property (coin, jewellery, pictures, etc.) beyond the value of £10, unless their value was declared at the time of delivery; (2) that any carrier may require
an increased rate of charge for such articles over the value of £10 by a notice affixed in his receiving house, and all persons delivering such articles are bound by the notice, without proof of its having come to their knowledge.

**causa causans.** The immediate cause: the last link in the chain of causation. It is to be distinguished from causa sine qua non, which means some preceding link but for which the causa causans could not have become operative.

**causa proxima non remota spectator.** [The immediate, not the remote, cause is to be considered.] In marine insurance the loss must be a direct consequence of the peril insured against, so that if the proximate cause of the loss is not a peril insured against, there is no liability. Similarly, in contracts of carriage by sea, the shipowner is not liable for damage in case of “excepted perils” and the test is whether the excepted peril was in fact the direct or dominant cause of the loss or damage, though not necessarily the last cause in point of time. See, e.g., Hamilton v. Pandorf (1887) 12 App. Cas. 518.

**causa sine qua non.** see **CAUSA CAUSANS**

**caveat.** A warning. An entry made in the books of the offices of registry of court to prevent a certain step being taken without previous notice to the person entering the caveat (who is called the caveator). Thus any person having, or claiming, an interest in the estate of a deceased person may enter a caveat at the Probate Registry and so prevent a grant of representation issuing in respect of that estate without reference to him.

**caveat emptor.** [Let the buyer beware.] At common law, when a buyer of goods had required no warranty he took the risk of quality upon himself, and had no remedy if he had chosen to rely on the bare representation of the vendor, unless he could show that representation to have been fraudulent. By the Sale of Goods Act, 1893, s. 14, however, a condition is implied that the goods will be reasonably fit for the buyer’s purpose, provided the buyer makes known to the seller the particular purpose for which he requires the goods, so as to show that he relies on the seller’s skill or judgment, and the goods are of a description which the seller ordinarily supplies.
census. The numbering of the inhabitants of the country. The Census Act, 1920, provides that census may be directed by Order in Council, provided five years have elapsed.

certiorari. A writ directed to an inferior court of record, commanding it to “certify” to the Queen in the High Court of Justice some matter of a judicial character. It is used to remove civil causes or indictments from inferior courts of record into the High Court, that they may be better tried, or if there has been abuse or error, re-tried. It has been replaced by an order of certiorari by the Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 7 (Ord. 59, rr. 3-10).

charge. In property law a charge is a form of security for the payment of a debt or performance of an obligation, consisting of the right of a creditor to receive payment out of some specific fund or out of the proceeds of the realization of specific property. The fund or property is said to be charged with the debt thus payable out of it. The only property charges capable of subsisting at law are: (1) A rentcharge in possession charged on land, being either perpetual or for a term of years absolute; (2) A charge by way of legal mortgage; (3) Tithe rentcharge annuities or similar charge on land not created by an instrument (Law of Property Act, 1925, s. 1(2)). See FIXED CHARGE; FLOATING CHARGE.

In criminal law a charge is an accusation; a charge to a jury is the address of the presiding judge with regard to the duties of the jury.

caharterparty. [Carta partita, a deed cut in two.] A written agreement by which s shipowner lets and entire ship, or a part of it, to the charterer for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the charterer undertakes to pay as freight for their carriage. The principal stipulations refer to the places of loading and delivery, the mode and time of paying the freight, the number of lay days (q.v.) and the rate of demurrage (q.v.). The charterparty may operate as a demise or lease of the ship itself with our without the services of the master and crew. The charterer then becomes fro the time the owner of the vessel, and the master and crew become his agents or servants. The test is: has the owner parted for the time with the whole possession and control of the ship?
chattels. (Latin, Catalla, Cattle.) Any property other than freehold land. Lease-hold and other interests inland less than freehold are termed chattels real, as they savour of the realty. Chattels personal are movable, tangible articles of property.

cheat. The misemeanour of fraudulently obtaining the property of another by any deceitful practice not amounting to felony, but of such a nature that it may directly affect the public at large.

cheque. A cheque is a bill of exchange (q.v.) drawn on a banker, payable on demand (Bills of Exchange Act, 1882, s. 73). The person making the cheque is called the drawer, and the person to whom it is payable is called the payee. When the cheque bears across its face the words “and Company,” or any abbreviation thereof, between two parallel transverse lines, it is said to be crossed generally, and when it bears across its face the name of a banker, it is said to be crossed a specially (ibid., s. 76). A generally crossed cheque can be paid only through a bank, and a specially crossed cheque only through the bank specified. A holder of a cheque crossed “not negotiable” cannot give a transferee a better title than he himself has (ibid., s. 81).

child. A person under the age of fourteen years (Children and Young Persons Act, 1933, s. 107). A child under ten years of age is exempt from responsibility for crimes committed by him: a child between the ages of ten and fourteen is presumed to be incapable of criminal intent, but this presumption may be rebutted by proof to the contrary; except that a boy under fourteen cannot commit a rape. By the Criminal justice Act, 1948, ss. 16, 17, sentence of death may not be pronounced on one who at the time of the offence was under eighteen. By the Magistrates’ Courts Act, 1952, s. 21, a child charged with an indictable offence must, in general, be dealt with summarily.

chivalry. Knight’s service (q.v.). See COURT OF CHIVALRY.

circuits. Divisions of the country for judicial business. For the purpose of holding assizes (q.v.) the country is divided into seven circuits, namely, the Northern, North-eastern, Midland, South-eastern, Oxford, Western and North and South Wales, the last being divided into two divisions. The country of Surrey is not included in any
circuit, but commissions for the discharge therein of civil and criminal business are issued not less than twice a year.

citation. (1) The calling upon a person who is not a party to an action or proceeding to appear before the court. (2) The quitation of decided cases in legal argument as authorities.

civil action. Proceedings by way of action (q.v.) as contrasted with criminal proceedings.

civil servant. A servant of the Crown, other than the holder of political or judicial office, who is employed in a civil capacity, and whose remuneration is paid wholly and directly out of moneys voted by Parliament. He is an officer employed in a department of the State with the approval of the Treasury. A civil servant is a person holding his appointment directly from the Crown, or one who has been admitted into the Civil Service with a certificate from the Civil Service Commissioners. He holds his office during the royal pleasure.

clean hands. A suitor or plaintiff who is free from any taint of fraud, sharp practice, etc. One who sues in good faith.

clergy. Persons in Holy Orders or ordained for religious service. The parish clergy are rectors, vicars, perpetual curates and curates.

club. A voluntary association of persons for social or other purposes. It is not a partnership, and must sue or be sued in the names of the members of the committee, or the officers, on behalf of themselves and all other members of the club. (See Ord. 15, rr. 12, 18n.) Members are only liable to the extent of their subscriptions. In a proprietary club the expenses are borne by a contractor, who receives the subscriptions of the members and makes his profit out of the difference.
A club is regulated by the rules agreed to by the members and for the time being in force. If a member is expelled from a club by a decision which has been arrived at without giving him an opportunity of being heard in his own defence, the court may grant an injunction, or give damages.

code. The whole body of law; whether of a complete system of law; e.g., the Roman Law Code of Justinian; the Code Napoleon of France; or relating to a particular subject or branch of law, such as the Sale of goods Act, 1893, or Bills of Exchange Act, 1882, which were statutes collecting and stating the whole of the law, as it stood at the time they were passed. In construing a statutory code, the courts refer to the law as it stood before codification to clear up a difficulty.

coe rsion. An act that is committed under physical coercion is not a criminal offence, but mere moral coercion is not a defence.

It was a common law presumption that a married woman who committed a felony other than homicide in the presence of her husband acted under his coercion and was not guilty of an offence, but this presumption was rebuttable. This doctrine was abolished by the Criminal Justice Act, 1925, s. 47, but it also provided that on a charge against a wife for any offence other than treason or murder, it is a good defence to prove that the offence was committed in the presence of and under the coercion of the husband.

cognizance. Judicial notice or knowledge; jurisdiction.

collateral. [By the side of.] A collateral assurance, agreement, etc., which is independent of, but subordinate to, an assurance or agreement affecting the same subject-matter. A collateral security is one which is given in addition to the principal security. Thus a person who borrows money on the security of a mortgage may deposit shares with the lender as collateral security. See CONSANGUINITY.
**collusion.** The arrangement of two persons, apparently in a hostile position or having conflicting interests, to do some act in order to injure a third person or deceive a court. In divorce, it is where a petition is presented or prosecuted by agreement or bargain between the parties or their agents; e.g., an agreement by one spouse to commit (or to pretend to commit) adultery so as to enable the other spouse to institute divorce proceedings: a bargain by one spouse not to defend proceedings brought by the other: an agreement to withhold evidence or specific charges, or to bring proceedings in consideration of a money payment. Collusion is a discretionary bar to divorce and to judicial separation. There must be full disclosure to the court (Matrimonial Causes Act, 1950, ss. 4-14; Matrimonial Causes Act, 1963, s. 4).

**commercial law.** The law of business contracts, bankruptcy, patents, trade-marks, designs, companies, partnership, export and import of merchandise, affreightment, insurance, banking, mercantile agency and usages.

**commission.** (1) An order or authority to do an act or exercise powers; e.g., an authority to an agent to enter into a contract, or the authority of a judge to sit at the assizes; (2) the body charged with a commission, e.g., the Charity Commission; (3) an agent’s remuneration.

**committal.** The sending of a person to prison, generally for a short period, or temporary purpose; e.g., for contempt of court. It is effected in a summary way by the tipstaff to whom the order for committal is handed (Ord. 44. r. 1. notes).

**committee.** (1) A person to whom the custody of the person or the estate of a lunatic was formerly committed or granted by the Lord Chancellor. See COURT OF PROTECTION.

**common pleas.** Common law actions between subject and subject. See COURT OF COMMON PLEAS.
**comutation.** The conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment.

**company.** An association of persons formed for the purpose of some business or undertaking carried on in the name of the association, each member having the right of signing his shares to any other person, subject to the regulations of the company. Companies are either incorporated or unincorporated. Unincorporated companies may not, in general, have more than 20 members.

An incorporated company is an entity distinct from its members. Companies are incorporated either (1) by charter; (2) by special Act of Parliament; or (3) by registration under one of the public general Acts relating to companies.

Companies are limited or unlimited, according as the liability of their shareholders is or is not limited. In the case of an unlimited company, each shareholder is liable to contribute to the debts of the company to the full extent of his property. See LIMITED COMPANY.

Joint stock companies are those having a joint stock or capital which is divided into numerous transferable shares, or consists of transferable stock.

A private company is one which (a) restricts the right to transfer its shares; (b) limits the number of its members to fifty; and (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company. Any two or more persons may form or carry on a private company.

An exempt private company is a private company which satisfies the following conditions: (1) subject to certain exceptions, no body corporate holds any of its shares or debentures; (2) subject to exceptions, no person other than the holder has any interest in any of its shares or debentures; (3) the number of debenture holders does not exceed fifty; (4) no body corporate is a director; (5) no person other than the
directors, members or debenture holders can determine the company’s policy (Companies Act, 1948, s. 129 and 7th Sched.). Copies of the balance sheet, profit and loss account, directors’ and auditors’ reports need not be annexed to the annual return under ibid., s. 124; loans to directors are not prohibited, and the auditor need not be qualified and may be in the employment of the company.

compensation. A payment to make amends for loss or injury to person or property, or as recompense for some deprivation; e.g., compensation to the owner for the compulsory acquisition of his property. See Land Compensation Act, 1961.

complainant. One who makes a complaint to the justices.

compromise. An agreement between parties to a dispute to settle it out of court.

concealment. Non-disclosure of a fact by a party to a contract. If active, and therefore fraudulent, it is a ground for rescission, but not otherwise, except in contracts uberrimae fidel; e.g., a policy of insurance.

conciliation. The bringing together of employers and workmen in an endeavour to settle disputes.

concilium magnum regni. The Great Council (q.v.).

condemnation. The adjudication of a Prize Court on a captured vessel that it has been lawfully captured which divests the owner of the vessel of his property and vests it in the captor.

condition. A provision which makes the existence of a right dependent on the happening of an event; the right is then conditional, s opposed to an absolute right. A true condition is where the event on which the existence of the right depends is future and uncertain.
An express condition is one set out as a term in a contract or deed. An implied condition is one founded by the law on the presumed intention of the parties, with the object of giving such efficacy to the transaction as the parties must have intended it should have.

A condition precedent is one which delays the vesting of right until the happening of an event; a condition subsequent is one which destroys or divests the right upon the happening of an event.

A condition in a contract is a stipulation going to the root of the contract, the breach of which gives rise to a right to treat the contract as repudiated. See WARRANTY.

**condonation.** The conditional forgiveness by the injured party of the guilty spouse with full knowledge of the matrimonial offence committed, and the reinstatement of the guilty spouse in his or her position in the married life. Condonation is a bar to divorce if the petition is based on adultery or cruelty. Any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative the necessary intent (Matrimonial Causes Act, 1963, s. 1). Resumption of cohabitation temporarily, for the purpose of reconciliation, is provided for (ibid., s. 2). Adultery once condoned cannot be revived (ibid., s.3).

**confession.** An admission of guilt made to another by a person charged with a crime. It is admissible only if free and voluntary; i.e., if it is not forthcoming because of any inducement, or threat, held out by a person in authority. It must not be made under hope of reward (other than spiritual) or fear of punishment in relation to the proceedings. Admissions may be obtained from a person by questions fairly and properly put to him by a police officer.

The Judges’ Rules govern the practice in regard to police questioning a suspected person with a view to obtaining a confession.
**confiscation.** The seizure and appropriation of property as a punishment for breach of the law, whether municipal or international. Confiscatory or penal legislation of a foreign government, will not, in general, be enforced as regards property situated within the jurisdiction of the courts of this country. (See, e.g., Frankfurter v. W.L. Exner [1947] Ch. 629.)

**consanguinity.** [Of the same blood.] Relationship by descent, either lineally, as in the case of father and son, or collaterally, by descent from a common ancestor; thus, cousins are related by collateral consanguinity, being descended from a common grandparent.

**consensus non concubitus facit matrimonium.** [Consent and not cohabitation constitutes a valid marriage.]

**consent.** Acquiescence, agreement. It is inoperative if obtained by fraud. Consent is a defence to a charge of rape, but not in case of unlawful carnal knowledge, or indecent assault, except (in general) where the person against whom the act is directed is over sixteen, which is called the “age of consent.” See VOLENTI NON FIT INURIA.

A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (Currie v. Misa (1875) L.R. 10 Ex. 162, per Lush. J.). The payment of a smaller sum is not consideration for the satisfaction of a larger (Fookes v. Beer (1884) 9 App. Case. 605). An executed consideration is some value already given; executor consideration is value to be given in the future. Good consideration is not valuable, but based on natural love or relationship.

**consortium.** The association between husband and wife which embraces companionship, love, affection, comfort, mutual services and sexual intercourse. A
husband has a right to the consortium et servitium of his wife; i.e., to her society and services. Any tortuous act, therefore, committed against the wife is actionable at the suit of her husband if he was thereby deprived for any period of her society or services. Consortium normally implies cohabitation of the spouses, but it is not determined by the mere temporary absence of one spouse from another; as, e.g., on military service. A wife has the right to sue where an intentional or malicious act has resulted in total (and not merely partial) loss of consortium as she is entitled to enjoy the society, comfort, and protection of her husband and to be maintained by him (see Best v. Samuel fox & Co. [1952] A.C. 716). See ENTICEMENT.

**conspiracy.** The agreement of two or more to do an unlawful act, whether criminal or tortuous in its nature, or to do a lawful act by unlawful means, whether the act is committed or not. It is a misdemeanour, and if to murder, is punishable by ten years’ imprisonment (Offences against the Person Act, 1861, s. 4). Conspiracy is also a tort for which the injured person has an action for damages. A combination for the purpose of injuring a person in his trade is not actionable if the real purpose of the combination was the furtherance or defence of the trade of the combination.

**constables.** Inferior officers of the peace. High constables were appointed at the courts leet of the franchise or hundred over which they presided. Their duty seems to have been to keep the peace within the hundred. Petty or parish constables were appointed by the justices in petty sessions for the preservation of the peace within their parish or township, and the service of the summonses and the execution of the warrants of the justices of the peace. They have been superseded by the establishment of city, borough and county police, etc.

**constituency.** An area having separate representation in the House of Commons. The Representation of the People Act, 1948, s. 1, provides that there shall, for the purpose of parliamentary elections, be certain county and borough constituencies, each returning a single member. The persons entitled to vote as electors shall be those resident there on disqualifying date who are British subjects of full age, and not
subject to any legal incapacity to vote, and registered in the register of parliamentary electors.

**constitution.** Formerly a law or ordinance; now the form in which a State is organized. A constitution may be (a) unwritten, resting mainly on custom and convention; (b) written, drawn up in legal form; (c) flexible, capable of being altered by ordinary legislative act; (d) rigid, capable of being altered only by special procedure.

*consuetude est altera lex.* [A custom has the force of law.]

**consuls.** Agents appointed to watch over the commercial interests of the State or its nationals in foreign parts. They may be entitled to diplomatic privileges or immunities, if recognized as members of the staff of an Embassy. Powers relating to the administration of the estates and property of nationals of certain foreign States are conferred upon the consul of that State (without diplomatic immunity) by the Conventions Act, 1949.

**contempt of court.** (1) Failure to comply with an order of superior court, or an act of resistance or insult to the court, or the judges. (2) Conduct likely to prejudice the fair trial of an accused person; punishable by fine or committal to prison.

A person is not guilty of contempt of court because he has published matter calculated to interfere with the course of justice in connection with pending or imminent proceedings if, reasonably he did not know or suspect that proceedings were pending or imminent: the innocent distributor of a publication containing such matter is also not liable (Administration of Justice Act, 1960, s. 11).

**Continental Shelf.** The seabed and subsoil, outside territorial waters. See the Continental Shelf Act, 1962.
**contract.** An agreement enforceable at law. An essential feature of contract is a promise by one party to another to do or forbear from doing certain specified acts. The offer of a promise becomes a promise by acceptance. Contract is that species of agreement whereby a legal obligation is constituted and defined between the parties to it.

For a contract to be valid and legally enforceable there must be (1) capacity to contract; (2) intention to contract; (3) consensus ad idem; (4) valuable consideration; (5) legality of purpose; (6) sufficient certainty of terms. In some cases the contract or evidence of it must be in a prescribed form; i.e. in writing or by deed, and the rule that a contract must be supported by valuable consideration does not apply in the case of contracts of record or by deed.

There are the following kinds of contract: (1) Of record, entered into through the machinery of a Court of Justice; e.g., a recognizance; (2) Specialty, by deed; (3) Simple or parol; i.e., in writing or verbal; (4) Implied, founded by law on the assumed intention of the parties; (5) Quasi (q.v.), founded by law on the circumstances, irrespective of the wishes of the parties.

**contributory negligence.** The defence in an action at common law for damages for injuries arising from negligence, that the plaintiff’s own negligence directly caused or contributed to his own injuries.

The original common law rule was if there was blame causing the accident on both sides, however small, the loss lay where it fell. This rule was mitigated by the doctrine of last opportunity,” i.e., that when both parties were negligent, the party which had the last opportunity of avoiding the results of the other’s carelessness was alone liable. This, however, was subsequently held not to be a rule of law, but merely a particular test of causation: the real question was, whose act caused the wrong? Thus, although the conduct of the plaintiff might have conduced to the injury, the defendant was alone liable if his was the effective or predominant cause of it.
The rule, however, that contributory negligence operated as a complete bar to the plaintiff’s claim did not apply to collisions at sea, where by the fault of two or more vessels damage is caused to one or more of those vessels. The general rule of maritime law is that each vessel is liable for so much of the damage suffered by the other vessel as is proportional to its degree of fault, the remainder of the damage lying where it falls.

The law was altered by the Law Reform (Contributory Negligence) Act, 1945, which provided that, where any person suffers damage as a result partly of his own fault and partly of the fault of others, a claim respect of that damage is not to be defeated by reason of the fault of the person suffering the damage. The damages recoverable, however, are to be reduced to such extent as the court thinks just and equitable having regard to the plaintiff’s share in the responsibility for the damage. But the court must first find and record the total damages which would have been recoverable if the plaintiff had not been at fault and the damages are apportioned according to the respective degrees of fault. See DANGER, ALTERNATIVE.

**conversion.** (1) In equity, conversion is the notional change of land into money, or money into land. The principle is that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted. The effect of conversion is to turn realty into personalty, and personalty into realty, for all purposes. It occurs in four cases: (1) partnership land is treated as personalty; (2) under order of the court; (3) under a trust; (4) under a contract for sale or purchase of realty.

In the event of a total failure of the objects for which conversion was directed in a deed or will no conversion takes place. In the case of partial failure of the objects under a will, the property passes to the person entitled to it in its unconverted state, although he takes it in its converted form. In cases under deeds, the property reverts to the settler its converted form. See RECONVERSION.

(2) At common law, conversion is that tort which is committed by a person who deals with chattels not belonging to him in a manner, which is inconsistent with the rights of the lawful owner whereby he is deprived of the use and passion of them. Any asportation (q.v.) of a chattel fro the use of the defendant or a third person amounts to a conversion. He who
wrongfully takes possession of the goods of another person does so at his own risk, and must either return them or pay for them. There must be a denial of the right of that other person to the possession and enjoyment of them. See FRAUDULENT CONVERSION.

**conveyancer.** A barrister or solicitor who specializes in drawing conveyances. Counsel experienced in conveyancing may be appointed conveyancing counsel to the court (Court of Chancery Act, 1852; Judicature Act, 1925, s. 217; Administration of Justice Act, 1956, s. 14).

**convict.** Formerly, one sentenced to death or imprisonment for treason or felony. Now one found guilty of an offence and imprisoned.

**convocation.** An assembly of the clergy of a Province.

**copyright.** The exclusive right of printing or otherwise multiplying copies of, inter alia, a published literary work; that is, the right of preventing all others from doing so. The infringement of this right is called piracy. Copyright extends to original, artistic, dramatic and musical works, and to recordings, films, and broadcasts. Copyright, in general, lasts during the lifetime of the author and for fifty years after his death. No assignment of copyright is valid unless in writing signed by or on behalf of the assignor. Licences may be granted in respect of copyright by the owner. See the Copyright Act, 1956; Musical Performances Protection Act, 1958.

**coram judice.** [In the presence of the Judge.] Before a properly constituted or appropriate court.

**coram non judice.** [Before one who is not a Judge] The proceedings are a nullity.

**corporation.** A body of persons having in law an existence and rights and duties distinct from those of the individual persons who from time to time form it. It has perpetual succession, a name and a common seal. Service of writs or process is upon an officer of the corporation. A corporation sole consists of only one member at a time in succession, e.g., a bishop. A corporation aggregate consists of a number of persons, e.g., incorporated companies and municipal corporations.
Corporations were not originally liable for crime, but now a corporation can be indicted, and fines may be inflicted upon it, but it is not liable in respect of offences punishable only corporally. In cannot now be said that a corporation cannot have the necessary guilty mind or wrongful intention to commit a criminal act. (D.P.P. v. Kent and Sussex Contractors Ltd. [1944] 1 K.B. 146) and a limited company can be indicted for a conspiracy to defraud (R.v. I.C.R. Haulage Ltd. [1944] K.B. 551). An act is done by a corporation if instigated or procured by those having the control of it, and in purported exercise of the corporation’s powers. A corporation is liable criminally for acts of omission, and for the acts of its servants committed in the course of their employment.

Corporation other than companies may enter into contracts with no more formality than an individual (Corporate Bodies’ Contracts act, 1960, ss. 1, 2).

corporeal property. Property which has a physical existence such as land or goods. See HEREDITAMENT.

corpus. [body.] the capital of a fund, as contrasted with the income.

corroboration. Independent evidence which implicates a person accused of a crime by connecting him with it; evidence which confirms in some material particular not only that the crime has been committed, but also that the accused committed it. See ACCOMPLICE.

costs. The general rule is that a successful litigant is entitled to his costs: costs abide the event. But they are in the discretion of the court: the court may award a gross sum in lieu of taxed costs, or give fixed costs, as prescribed by the Costs Rules. A verdict is said to carry costs when the party for whom it is given becomes entitled to the payment of his costs.

Costs may be ordered on the following bases. (1) As between solicitor and client: the charges which a solicitor is entitled to make and recover from the client as his reasonable remuneration for professional services rendered within the scope of his client’s instructions. (2) As between party and party: the expenses which a successful litigant is entitled to recover from the other side by reason of his being a party to legal proceedings. They include court fees, stamps, etc. and the reasonable charges and fees of the solicitor and counsel. (3) Common Fund costs: these were formerly called “Solicitor and Own Client” costs. They are
appropriate where costs are e.g., to be paid out of fund or estate in indemnification of the court and expenses incurred in protecting it.

“Four Day Costs”; the fixed sum for costs indorsed on a writ claiming a liquidated sum, as payable if the sum claimed is paid within four days, further proceedings being stayed. See SECURITY FOR, COSTS; TAXATION.

counterclaim. A counterclaim may be made by a defendant who alleges that he has any claim, or is entitled to any relief or remedy against a plaintiff, instead of bringing a separate action. A counterclaim may be made against any other person who is liable to him together with the plaintiff in respect of the counterclaim or the original subject matter of the action (Ord. 15, rr. 2, 3). A counterclaim must be separately pleaded. The plaintiff must serve his defence to the counterclaim within fourteen days of service (Ord. 18, r. 3).

If a counterclaim for money exceeds the plaintiff’s claim, judgment is given in favour of the defendant. If both claim and counterclaim succeed two separate judgments with costs are given.

counterfeit. Made in imitation. To falsely make or counterfeit any coin resembling any current coin is a felony (Coinage Offences Act, 1936, s. 1). See also Counterfeit Currency (Convention) Act, 1935.

court. (1) A place where justice is administered; (2) the judge or judges who sit in a court; (3) an aggregate of separate courts or judges, as the Supreme Court of Judicature.

Court-martial. A court convened by or under the authority of the Crown to try an offence against military or naval discipline, or against the ordinary law, committed by a soldier or sailor in Her Majesty’s service. A Courts-Martial Appeal Court was established by the Courts-Martial (Appeals) Act, 1951, Part. I.

Court of Chancery. This was the court of equity presided over by the Lord Chancellor, assisted by the Master of the Rolls, and judges of first instance, known as Vice-Chancellors. There was always a common law court and offices in Chancery which dealt with enrolments of deeds, the issue and sealing of writs and commissions, etc. Since the Judicature (Officers)
Act, 1879, they have formed part of the Central Office of the Supreme Court. The Court of Chancery was merged in the High Court of Justice by the Judicature Act, 1873, and is now known as the Chancery Division (see Judicature Act, 1925, s. 18 (2), s. 56 (1)).

**Court of Common Pleas.** One of the courts into which the Curia Regis was divided. It was originally the only superior court of record having jurisdiction in ordinary civil actions between subject and subject. It consisted of a Lord Chief Justice and five puisne justices. It was transferred to the High Court of Justice by the Judicature Act, 1873, and is now represented by the Queen’s Bench Division (see Judicature Act, 1925 ss. 18(1) 56(2)).

**Court of Exchequer.** One of the courts into which the Curia Regis was divided. By the year 1200 it had a separated existence; but it continued to collect revenue in addition to trying cases, until the first Chief Baron was appointed in 1312. It was originally a court having jurisdiction only in matters concerning the public revenue, e.g., in suits by the Crown against its debtors; but it afterwards acquired, by the use of fictitious pleadings, jurisdiction in action between subject and subject. It was formerly subdivided into a court of common law and a court of equity; but its equitable jurisdiction (except in revenue matters) was transferred to the Court of Chancery. Under the Judicature Act, 1873, the jurisdiction of the Court of Exchequer was transferred to the High Court of Justice, Exchequer Division, until, in 1881, the three “common Law” divisions of the High Court were merged into one. It is now represented by the Queen’s Bench Division (Judicature Act, 1925, ss. 18(2) 56 (2)). See QUO MINUS.

**Court of Kin’s [Queen’s] Bench.** The court originally held in the presence of the Sovereign. It was one of the superior courts of common law having, ultimately, in ordinary civil actions concurrent jurisdiction with the Courts of Common Pleas and Exchequer. It’s principal judge was styled the Lord Chief Justice of England. It also had special jurisdiction over inferior courts, magistrates and civil corporations by the prerogative writs of mandamus, prohibition and certiorari, and in proceedings by quo warranto and habeas corpus. It was also the principal court of criminal jurisdiction in England: informations might be filed and indictments preferred in it in the first instance. The King’s [Queen’s] Bench accordingly had two “sides,” namely, the”plea side,” for civil business, and the “Crown side,” or “Crown Office,” for the criminal and extraordinary jurisdiction. The court was merged into the Supreme
Court by the Judicature Act, 1873, of which it is now the Queen’s Bench Division (see Judicature Act, 1925, ss. 18(2), 56(2)). See BILL OF MIDDLESEX.

court of last resort. A court from which there is no appeal.

court of record. A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has authority to fine and imprison for contempt of its authority. The Supreme Court is a superior court of record, and the following are inferior courts of record: Mayor’s and city of London Court; Liverpool Court of Passage; Salford Hundred Court of Record; Derby Borough Court of Record.

Court of Requests. A minor court of equity, originally a committee of the King’s Council, presided over by the Lord Privy Seal and two Masters of Requests. It heard poor men’s causes and those of the King’s servants. It fell into desuetude during the Protectorate.

courts of request. Inferior courts having local jurisdiction in claims for small debts. Abolished 1846.

Covenant. An agreement creating an obligation contained in a deed. It may be positive, stipulating the performance of some act or the payment of money, or negative or restrictive, forbidding the commission of some act. Covenants may be used to server the purpose of a bond (q.v.). A covenant is said to run with the land, or with the reversion, when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land, or the reversion, as the case may be. At common law covenants ran with the land, but not with the reversion; but the statute 32 Hen. 8, c. 34 provided that both the burden and benefit of covenants should run with the reversion.

To run with the land covenants must “touch and concern” the thing demised, and must not be collateral or personal An assignee of a lease is bound by negative covenants, and by positive covenants as to things actually in existence on the land, but not by covenants as to things not in existence, unless the original lessee covenanted fro himself and his assigns. The Law of Property Act, 1925, s. 79, provided, however, that a covenanter shall be deemed to bind his successors.
In equity, negative or restrictive covenants run with the land, except against a bona fide purchaser for value without notice. Since 1925 restrictive covenants have to be registered as land charges. Positive covenants do not run with the land. The Lands Tribunal may discharge or modify restrictive covenants under s. 84, Law of Property Act, 1925.

**creditor.** A person to whom a debt is owing. A secured creditor is a person who holds a mortgage, charge, or lien on the property of his debtor. In bankruptcy of the debtor, a secured creditor may either give up his security and prove for the whole debt, or realize it, or give credit for it, and prove for the balance (Bankruptcy Act, 1914, Sched. II, 10-12).

**crime.** A crime may be described as an act, default or conduct prejudicial to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment in special proceedings, normally instituted by officers in the service of the Crown. Crimes are divided into treasons, felonies and misdemeanours, in that order of seriousness.

**cross-examination.** When a witness has been intentionally called by either party (not merely to produce a document or be identified) the opposite party has a right, after examination-in-chief is closed or waived, to cross-examine him. It is not confined to matters proved in examination-in-chief, and leading questions may be put. Failure to cross-examine a witness generally amounts to an acceptance of his version of a transaction. See EXAMINATION.

**cruelty.** Cruelty is a ground for divorce under the Matrimonial Causes Act, 1950, s. 1. It is conduct of such a character by one spouse as to have caused danger to life, limb, or health (bodily or mental) of the other spouse, or such as to give rise to a reasonable apprehension of such danger. It is not restricted to physical violence or apprehension thereof. The intention or state of mind of the one spouse is immaterial: malignity need not be present (Gollins v. gollins [1963] 3 W.L.R. 176). The use of contraceptives by one spouse against the wishes of the other spouse may be cruelty (Forbes v. Forbes [1956] p. 16).

**cujus est dare ejus est disponere.** [He who gives anything can also direct how the gift is to be used.]
**cujus est solum ejus est usque and coelum.** [Whose is the soil, his is also that which is above it.]

**culpa lata.** [Roman Law.] Incurred by extreme negligence; negligence so gross that it cannot but seem intentional. It amounts to dolus (fraud).

**curia Regis.** The King’s Court. See AULA REGIS.

**custom.** A rule of conduct, obligatory on those within its scope, established by long usage. A valid custom has the force of law. Custom is to society what law is to the state (Salmond). A valid custom must be of immemorial antiquity, certain and reasonable, obligatory, not repugnant to statute law, though it may derogate from the common law.

**D**

**damages.** Compensation or indemnity for loss suffered owing to a breach of contract or tort. The principle is that the injured party should be put as nearly as possible in the same position, so far as money can do it, as if he had not been injured. Damage from the same cause must be recovered once and for all. Damages are assessed by the jury, and the court will not interfere unless they are such that twelve reasonable men could not possibly have awarded them, or are obviously based on a misconception. The test by which the amount of the damages is ascertained is called the measure of damages. Nominal damages are of trifling amount awarded contemptuously, or for the mere invasion of a right without damage. Exemplary damages are awarded not only be way of compensation, but as a punishment to the offender.

Where a judgment is given for damages to be assessed, they are assessed by a Master, unless the court directs they shall be assessed by an official or special referee. (Ord. 36B, rr. 2, 5.)

**damnum absque injuria.** [Loss without wrong.] Loss or damage for which there is no legal remedy.

**damnum sine injuria esse potest.** There may be damage or loss inflicted without any act being done which the law deems an injury. For instance, harm may be caused by a person...

**danger, alternative.** The principle of law that where a person is suddenly put in a position of imminent personal danger by the wrongful act of another then what is done by that person in the agony of the moment cannot fairly be treated as negligence; e.g., jumping and sustaining injury from a runaway coach (Jones v. Boyce (1816) 1 Starkie 493; The Bywell Castle (1879) 4 P. D. 219). So a lady locked in a public lavatory is entitled to make reasonable efforts to escape (Sayers v. Harlow U.D.C. [1958] 1 W.L.R. 623).

**de facto.** [In fact.]

**de homine replegiando.** A writ which formerly lay to bail out one wrongfully imprisoned.

**de novo.** [Anew.]

**de odio et atia.** [Of malice and ill-will.] A writ which lay for a man committed to prison upon suspicion of murder, which commanded the sheriff to inquire whether the committal was upon just cause of suspicion or only upon malice and ill-will. If the latter then another writ issued commanding the sheriff to bail him.

**dead freight.** Freight payable by a charterer in respect of cargo not shipped.

**debenture.** (1) A certificate of right to drawback (q.v.).

(2) An instrument usually under seal, issued by a company or public body as evidence of a debt or as a security for a loan of a fixed sum of money, at interest. It contains a promise to pay the amount mentioned in it, and is usually called a debenture on the face of it. “Debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not (Companies Act, 1948, s. 455 (1)). See ibid., ss. 86-94.
**debt.** A sum of money due from one person to another. Debts are (1) of record; e.g., recognisances and judgment debts; (2) specialty debts, created by deed; (3) simple contract debts; (4) Crown debts (q.v.); (5) secured debts, those for which security has been taken; (6) preferential debts, those payable in full in bankruptcy prior to other debts; i.e., rates and taxes for one year, national insurance contributions, workmen’s compensation and wages or salaries due to clerks and servants, etc. (Bankruptcy Act, 1914, s. 33). See IMPRISONMENT FOR DEBT.

**deceit.** An action upon the case lay to recover damages caused by the fraud or false affirmation by the defendant of a thing within his knowledge. Now it is the tort consisting of the making of a willfully false statement by words or conduct with intent that another shall act upon it, with the result that it is so acted upon and harm results. See FRAUD; MISREPRESENTATION.

**declaration.** (1) A formal statement intended to create, preserve, assert or testify to a right. (2) The decision of the court or judge on a question of law or rights. (3) A statement of claim in pleading.

Declarations consisting of statements made substantially contemporaneously with acts are admissible in evidence as forming part of such acts (or, res gestae).

Statements by deceased persons are admissible in evidence as follows: (1) against interest; declarations, oral or written, made by deceased persons against their pecuniary or proprietary interests; (2) in course of duty: declarations, oral or written, made by deceased persons in the ordinary course of duty, contemporaneously with the facts stated, and without motive to misrepresent; (3) as to public rights: declarations by deceased persons of competent knowledge, made ante litem motam as to ancient rights of a public or general nature; (4) as to pedigree: declarations made by deceased relations, ante litem motam; (5) dying declarations (q.v.); (6) as to contents, etc., of wills.

**decree.** An order of a court pronounced on the hearing of a suit.

**deed.** A writing or instrument written on paper or parchment, signed, sealed and delivered, to prove and testify the agreement of the parties whose deed it is to the things contained in the deed. A deed generally consists of the following parts: the premises, the habendum, the
tenendum, the reddendum, the conditions, and the covenants. See ACKNOWLEDGMENT OF DEEDS; ESCROW; RESERVATION.

defamation. The tort consisting in the publication of a false and derogatory statement respecting another person without lawful justification. A defamatory statement is one exposing him to hatred, ridicule or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, profession or trade. It may constitute libel or slander (q.v.). It must be construed in its natural and ordinary meaning; if not defamatory in such meaning, it must be construed in the special meaning, if any, in which it was understood by the person by and to whom it was published.

It is for the judge to say whether the words are reasonably capable of a defamatory meaning, but for the jury to say whether under the circumstances of the case they in fact bear that meaning.

No action can be maintained for libel or slander unless there be a publication; i.e., a communication by the defendant of the defamatory statement to some person other than the plaintiff.

The Defamation Act, 1952, makes a number of detailed amendments; e.g., to the defences of justification and fair comment. See APOLOGY; BROADCASTING; PRIVILEGE; SPECIAL DAMAGE.

default. To make default is to fail in some duty; e.g., to pay a sum due; or failure to take any step required by the rules of procedure; e.g., in default of appearance (q.v.), the plaintiff may, in general, proceed in the absence of the other party to judgment (Ord. 13).

defence. A pleading served in an action in the High Court in reply to the statement of claim. It answers the allegations in the statement of claim by admissions or denials. The defendant must deal with each of the plaintiff’s allegations; a general denial is inadmissible. A defendant who has entered an appearance must serve his defence within fourteen days after the time limited for appearance (Ord. 18, r. 2). In general, in default of defence, the plaintiff may enter judgment without leave (Ord. 19). See COUNTERCLAIM.
**defendant.** A person against whom an action, information or other civil proceeding (other than a petition) is brought; also a person being charged with a misdemeanour or minor offence.

**degree.** A step in the line of descent or consanguinity.

**dehors.** [Without.] Outside the scope of; irrelevant.

**demise.** Originally any transfer or succession of a right; now to grant a lease of lands or other hereditaments.

**deponent.** A person who makes an affidavit or deposition.

**deposit.** In a contract of sale of land, the deposit is a payment made by way of earnest to bind the bargain. A purchaser who repudiates the contract for good and sufficient reason is entitled to the return of his deposit. If he repudiates it without just and sufficient cause, he forfeits his deposit. The court has a general power to order the return of a deposit (law of Property Act, 1925, s. 49 (2)). But if the money is not a deposit but apart-payment, it is recoverable by the purchaser even if he is in default. See DEPOSITORS.

**deposition.** A statement on oath of a witness in a judicial proceeding: the evidence of witnesses before a magistrate or justices taken down in writing. It must be signed both by the witness and at least one of the committing magistrates. A deposition may be used at the trial instead of calling the witness himself, if he has died in the interval, or has become insane, or is too ill to travel, or is being kept out of the way. (See Criminal Justice Act, 1925, ss. 12, 13; Magistrates’ Courts Act, 1925, ss. 4, 78)

Depositions de bene esse are the depositions on oath of witnesses who are not likely to be able to attend the trial, and cannot be given in evidence without the consent of the opposite party, unless the witness is dead, or beyond the jurisdiction, or incapacitated from attending the trial by sickness or other infirmity. See generally, Ord. 37

**derogate.** To destroy, prejudice or evade a right or obligation. No one can derogate from his own grant.
**descent.** The devolution of an interest in land upon the death of the owner of it intestate to a person or persons by virtue of consanguinity with the deceased. The rules of descent prior to 1926 (abolished by the Administration of Estates Act, 1925, s. 45), were as follows:

1. To the issue of the last purchaser in infinitum.
2. To the male issue before the female.
3. Where two or more of the male issue were in equal degree of consanguinity – to the eldest only; where females, they inherited all together (as coparcenors, or parcenors).
4. Lineal descendants in infinitum represented their ancestor, or stood in the same place as the ancestor had he been living.
5. On failure of lineal descendants – to the nearest lineal ancestor.
6. To the father and all the male paternal ancestors and their descendants before the female paternal ancestors or their heirs; to the female paternal ancestors and their heirs before the mother or any of the maternal ancestors (or their descendants); to the mother and the male maternal ancestors (or other descendants) before the female maternal ancestors or their heirs.
7. To the half blood next after the same degree of the whole blood and their issue when the common ancestor was a male; and next after the common ancestor when a female.
8. To the mother of the more remote male paternal ancestor and her heirs before the mother of a less remote male paternal ancestor and her heirs; to the mother of the more remote male maternal ancestor and her heirs before the mother of a less remote male maternal ancestor and her heirs.
9. On a total failure of heirs of a purchaser – to the person last entitled, as if he had been the purchaser. See INTESTATE SUCCESSION.

**desertion.** The matrimonial offence committed where a husband voluntarily and without reasonable cause leaves his wife against her wish; similarly, where the wife leaves her husband. It is not essential that one or other of the parties should actually depart from the matrimonial home, if there is a complete abandonment of all matrimonial duties: desertion is not from a place, but from a state of things.

**detinue.** The action which is the remedy where a person claims the specific return of goods wrongfully detained from him or their value with or without a claim for hire or for damages
for detention. Judgment may be enforced by a writ of delivery (See Ords. 13. r. 3; 48). See CONVERSION.

deviation. The intentional departure from the due course of a voyage, which discharges the underwriters of a voyage policy of marine insurance, on the ground of the alteration of the nature of the risk, but in certain cases a deviation is justifiable. The carrier is not liable for damage resulting from deviation to save life or property (Carriage of Goods by Sea Act, 1924, Art. IV, s. 4).

digest. A collection of rules of law on concrete cases, as opposed to a code. q.v. The Digest of Justinian was a compilation of the Roman Law from the writings of the jurists (A.D. 533).

diplomatic privilege. The exemption from ordinary law of an accredited representative of a foreign Sovereign. An ambassador or other public minister exercising diplomatic functions and accredited to the Queen of England by a foreign State or Sovereign is not within the jurisdiction of the English courts during his term of office. The immunity also extends to subordinate officials of the embassy, but can be waived by waived by the ambassador.

The International Organisations (Immunities and Privileges) Act, 1950 (a consolidation Act) confers analogous privileges and immunities upon certain international organizations and persons connected therewith; judges of and suitors to the International Court of Justice, and representatives attending international conferences. The Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, confers on the Commonwealth High Commissioners and the Irish ambassador in London, their staffs and families, analogous personal immunities, and inviolability of premises. See EXTERRITORIALITY.

The Diplomatic Immunities (Conferences with Commonwealth countries and Republic of Ireland) Act, 1961, gives diplomatic immunity to representatives of Commonwealthe governments, etc., attending conferences with the Government of the United Kingdom and their staffs, their names being included in a list.
directors. The persons charged with the management of a company. In some respects they are agents of the company, and trustees of the company’s money and property, and occupy a fiduciary position. Their appointment, powers, etc., are governed by the articles of association. Companies registered after 1929 must have at least two directors; private companies one (Companies Act, 1948, s. 176). See also ibid., ss. 178-204.

discharge. To deprive a right or obligation of its binding force; to release a person from an obligation or prison; thus payment discharges a debt. Rescission, release, accord and satisfaction, performance, judgment, composition with creditors and merger are varieties of discharge.

disclaimer. A renunciation: the refusal, usually by deed, of a proposed trustee to accept the trust. A power, whether coupled with an interest or not, may be disclaimed by deed (Law of Property Act, 1925, s. 156). Under s. 54 of the Bankruptcy Act, 1914, the trustee in bankruptcy may disclaim onerous property; e.g., a lease.

dismissal. An action may be dismissed for want of prosecution; i.e., if a plaintiff does not, within the time limited, deliver a statement of claim, take out a summons for direction, give discovery of documents or notice of trial (see Ord. 27).

dividend. The interest payable on the public funds; the payment made out of profits to the shareholders in a company; or the amount payable upon each pound of a bankrupt’s liabilities.

divorce. Dissolution of marriage. This was, prior to the Matrimonial Causes Act, 1857, in the jurisdiction of the ecclesiastical courts. Divorce a mensa et thoro was “from and board”: now represented by a judicial separation, and divorce a vinculo matrimonii “from the bond of marriage,” is now represented by a decree of nullity.

By the Matrimonial Causes Act, 1950 (a consolidating Act). s. 1, a petition for divorce may be presented to the High Court, either by the husband or the wife, on the ground that the respondent: (a) has since the celebration of the marriage committed adultery; (b) has deserted the petitioner without cause for at least three years immediately preceding the presentation of the petition; (c) has since the celebration of the marriage treated the petitioner with cruelty (q.v.); (d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. A
period of treatment is continuous if not interrupted for more than 28 days (Divorce (Insanity and Desertion) Act, 1958, s. 2).

A petition may be presented by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality. A petition of divorce, however, may not be presented within the first three years of marriage unless the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent (ibid., s. 2).

A decree of divorce is to be pronounced if the court is satisfied that the case has been proved, and in case of adultery the petitioner has not been accessory to, or connived at, or condoned, the adultery; or in case of cruelty, the petitioner has not condoned it. See also COLLUSION.

But the petition may be dismissed if the petitioner has been guilty of adultery, or unreasonable delay in proceeding, or of cruelty (q.v.); or in case of adultery or cruelty of having deserted, or willfully separated from, the other party beforehand; or of such willful neglect or misconduct as has conduced to the adultery, unsoundness of mind, or desertion of the other party (ibid., s. 4). Delay may be a bar to divorce. See ALIMONY.

docket. An epitome or abstract of a judgment, decree, order, etc.

dole. A share.

domicile, or domicil. The country in which a person is, or is presumed to be, permanently resident; the place of a person’s permanent home. It depends on the physical fact of residence plus the intention of remaining. The civil status of a person, or his legal rights and duties, including capacity to marry, are determined by the law of his domicile. His political status, or nationality, is independent of domicile.

Domicile may be (1) of origin or birth; (2) by operation of law. On marriage a woman takes the domicile of her husband and her domicile changes with that of the husband. An infant’s domicile changes with that of his father. (3) Of choice. To acquire a domicile of choice a person must have a definite determination to abandon the old domicile coupled with an intention to establish a permanent residence in (and actually take up residence in) a new domicile. If a domicile of choice is abandoned the domicile of origin revives until a new
domicile of choice is acquired. The burden of proof lies on the person asserting he has acquired a domicile of choice.

**Dominions. commonwealth Countries.** Autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or internal affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations. They were Canada, Australia, New Zealand, Union of South Africa. Irish Free State and Newfoundland (Statute of Westminster, 1931, s. 1). Newfoundland has been since 1949 part of the Dominion of Canada (British North America Act, 1949); the Irish Free State (later Eire) is now the independent Republic of Ireland (Ireland Act, 1949). Ceylon is a Dominion (Ceylon Independence Act, 1947). South Africa is now a republic outside the Commonwealth (South Africa Act, 1962). See COMMONWEALTH.

**domus sua cuique est tutissimum refugium.** [To every one his house is his surest refuge.] Every man’s house is his castle. See Semayne’s Case (1604) 5 Clke 91.

**dona clandestina sunt semper suspiciosa.** [Clandestine gifts are always to be regarded with suspicion.]

**donatio mortis causa.** A gift of personal property in anticipation of death. To be a valid gift it must be made in contemplation of the donor’s death, be intended to take effect on his death from his existing illness (unless the donor indicates otherwise), and be completed by the delivery at the time to the donee.

**donee.** A gratuitous recipient.

**donor.** A giver.

**dower.** That portion of lands or tenements which the wife hath for term of her life of the lands or tenements of her husband after his decease, for the sustenance of herself and the nurture and education of her children (Coke). Where a man was seised of land for an estate of inheritance (otherwise than as joint tenant), and died leaving a widow, she was entitled to hold the third part of such land and tenements as were her husband’s at any time during the coverture, as tenant in dower for the term of her life.
Under the Dower Act, 1833, no widow was entitled to dower out of any land which had been absolutely disposed of by her husband in his lifetime or by his will, or in which he devised any estate or interest for her benefit unless (in the latter case) a contrary intention was declared by the will. A husband might also wholly or partially deprive the widow of dower by a declaration in a deed or will. The right to dower, however, was extended to lands of the husband of which he had not had legal seisin; and to equitable as well as legal estates of inheritance in possession. Dower was abolished by the Administration of Estates Act, 1925, s. 45 (1) ©. See ADMEASUREMENT OF DOWER.

draft. (1) An order for the payment of money; e.g., a cheque; (2) A rough copy of a legal document in the course of preparation.

drawback. The refund of duty made on the exportation of goods for which customs duties have been paid on importation, or in which exciseable goods have been incorporated in manufacture.

drawee. The person to whom a bill of exchange is addressed.

drawer. One who signs a bill of exchange as the maker.

droit. Right or law.

dum casta vixerit. [While she lives chastely.]

durante vita. [During life.]

dying declaration. A statement admissible in evidence, in trials of homicide, made by the deceased person whose death is the subject of the charge, as to the cause and circumstances of the death; the deceased having at the time abandoned all hope of recovery.

E

E.&O.E. [Errors and omissions excepted.] A declaration on commercial documents intended to protect the maker from liability for mistakes.

E.F.T.A. See the European Free Trade Association Act, 1960

E.P.D. [T.] Excess Profits Duty (q.v.): Excess Profits Tax (q.v.).
Easement. A servitude; a right enjoyed by the owner of land over the lands of another: such as rights of way, rights of light, rights of support, rights to a flow of air or water. An easement must exist for the accommodation and better enjoyment of the land to which it is annexed; otherwise it may amount to a mere licence. Easements are created by express grant or prescription (q.v.). The dominant tenement is the land owned by the possessor of the easement, and the servient tenement is the land over which the right is enjoyed.

An easement confers no proprietary rights on its owner; if it does it is not an easement. It is a privilege without a profit. A positive easement consists of a right to do something on the land of another; a negative easement restricts the use the owner of the servient tenement; may make of his land. An easement may be lost by abandonment; continued non-user may be evidence of an intention to release the easement.

Easements are still capable of existing as legal interests (Law of Property Act, 1925, s. 1 (2)(a)). See QUAST-EASEMENT.

eat inde sine die. [Let him go without a day.] The dismissal of a defendant from a suit.

Ecclesiastical Courts. The chief are the two Provincial Courts of Canterbury and York, and the Diocesan Courts of each diocese. See also the Ecclesiastical Jurisdiction Measure, 1963.

ei incumbit probation qui dicit, non qui negat. [The burden of proof is on him who alleges, and not on him who denies.]

ei qui affirmat, non ei qui negat, incumbit probation. [The burden of proof lies on him who affirms a fact, not on him who denies it.]
**ejectment.** Originally the action of ejectment was a remedy applicable to a leaseholder wrongfully dispossessed, but owing to the cumbrousness of the old real actions for trying the right to the freehold it was extended to freeholds by means of legal fictions. There was an imaginary lease by the person claiming the freehold to an imaginary “John Doe” who was assumed to be ejected by an imaginary “Richard Roe” (the casual ejector). The claimant, to substantiate the lease, endeavoured to prove his title and the person in possession was allowed to defend on admitting the fictions, and thus the freehold title was put in issue. An action was entitled, e.g., Doe d. Rigge v. Bell (= Doe, on the demise or lease of Rigge v. Bell). It was abolished by the Common Law Procedure Act, 1852. See RECOVERY.

**election.** Choice. The equitable doctrine of election is to the effect that he who takes a benefit under an instrument must accept or reject the instrument as a whole; he cannot approbate and reprobate. If there is in the will of X a gift of A’s property to B, and a gift to A, A can only take the gift by giving his own property or its value to B. Alternatively he can elect to keep his own property and reject the gift.

**Emancipatio.** [Roman law.] Freedom from power. (1) By the ancient process of three fictitious sales, each followed by a manumission: abolished by Justinian. (2) By imperial rescript registered by a magistrate (Anastasius). (3) The parent went direct before a judge or magistrate and let his descendant go free from his power (Justinian).

**embargo.** The provisional seizure or detention by a State of ships or property, generally in its own ports. If only applied by a State to its won ships by virtue of municipal law, it is termed civil embargo; if not, it is hostile embargo, which is a method of international redress short of war.

**embezzlement.** The felony consisting of the conversion to his own use by a clerk or servant of property received by him on behalf of his master (Larceny Act, 1916, s. 17 (1). The distinction between embezzlement and larceny by a clerk or servant is that in
larceny the thing stolen is taken out of the possession of the master, whereas in embezzlement the thing is appropriated while in possession of the servant, and before it has come into the possession of the master.

emergency powers. Her Majesty may by proclamation declare a state of emergency and make regulations accordingly (Emergency Powers Act, 1920), as in the 1955 railway strike.

emphyteusis. [Roman law.] A grant of land for ever, or for a long period, on condition that an annual rent (canon) shall be paid to the grantor and his successors, and that, if the rent be not paid, the grant shall be forfeited.

enjoyment. The exercise of a right.

enroll. To enter (or copy) a document on an official record. The Enrolment Office was in the Court of Chancery; later transferred to the Central Office of the Supreme Court.

ens legis. A legal being or entity such as a company.

Enticement. The action in tort damages for inducing by persuasion one spouse to leave the other, or to remain away from that other, without justification. The gist of the action is the loss by the injured spouse of the consortium of the other. See Place v. Searle ((1932] 2 K.B. 497); Newton v. Hardy ((1933) 149 L.T. 165: enticement of husband). This action does not survive the death of a person under the Law Reform (Miscellaneous Provisions) Act, 1934, s. 1 (1).

equitable. (1) That which is fair; (2) that which arises from the liberal construction of application of a legal rule or remedy; (3) in particular, that which is in accordance with, or regulated, recognized, or enforced by the rules of equity, as opposed to those of the common law.
**equitable interests.** The interests in property which were created and enforced by the Court of Chancery, where it would have been against conscience to permit the legal owner of property to keep the benefit of property for himself; e.g., a trustee had the legal estate in the trust property, but he was compelled to hold the property on behalf of the beneficiaries, whose interests were merely equitable. At first, equitable interests were rights in personam (i.e., as against the trustee), and subject to the rights of the bona fide purchaser for value without notice. But for certain purposes, an equitable interest is tantamount to a real right, particularly in following trust funds, which the beneficiary can recover. See TRACING. Also in the income tax cases of Baker v. Archer-Shee [1927] A.C. 844; Archer-Shee v. Garland [1931] A.C. 212 it was held, in effect, that a life tenant has an interest in the specific trust assets.

In consequence, equitable interests are “hybrids,” midway between jura in rem and jura in personam, and are as follows: (1) The trust interest proper; (2) The mortgage relationship; (3) Between vendor and purchaser; (4) In agreements for a lease; (5) Restrictive convenants; (6) Equitable easements; (7) Equitable rights to profits a prendre, (8) Limited owners’ charges; (9) Licencees’ rights (Hanbury, Modern Equity).

**equity.** Primarily fairness or natural justice. A fresh body of rules by the side of the original law, founded on distinct principles, and claiming to supersede the law in virtue of a superior sanctity inherent in those principles (Maine). Equity is the body of rules formulated and administered by the Court of Chancery to supplement the rules and procedure of the common law.

By the Judicature Act, 1873, the Court of Chancery was amalgamated with the Common Law Courts to form the Supreme Court, and rules of equity are administered in all divisions of the court, and where there is any conflict between the rules of law and equity, equity is to prevail (see the Judicature Act, 1925, ss. 36-44).
(1) Equity acts in personam.
(2) Equity acts on the conscience.
(3) Equity will not suffer a wrong to be without a remedy.
(4) Equity follows the law.
(5) Equity looks to the intent rather than the form
(6) Equity looks on that as done which ought to be done.
(7) Equity imputes an intent to fulfil an obligation.
(8) Equitable remedies are discretionary.
(9) Delay defeats equities.
(10) He who comes into equity must come with clean hands.
(11) He who seeks equity must do equity.
(12) Equity regards the balance of convenience.
(13) Where there are equal equities the law prevails.
(14) Where there are equal equities the first in time prevails.
(15) Equity, like nature, does nothing in vain.
(16) Equity never wants (i.e., lacks) a trustee.
(17) Equity aids the vigilant.
(18) Equity is equity.
(19) Equity will not assist a volunteer.
(20) Equity will not permit a statute to be a cloak for fraud.

**equity of redemption.** (1) The equitable right of a mortgagor to redeem the mortgaged property after the legal right to redeem has been lost by default in repayment of the mortgage money at the due date. (2) The equitable estate or interest of a mortgagor in his mortgaged land in respect of which an equitable right to redeem subsists.

**error.** Some mistake in the foundation, proceeding, judgment or execution of an action in a court of record, requiring correction either by the court in which it occurred (in case of error of fact), or by a superior court (in case of error in law). To “bring
error” was to apply for the rectification required. Abolished by Judicature Act, 1873. See APPEAL; MISTAKE.

**escape.** The misdemeanour committed by a person who permits any person in his lawful custody to regain his liberty otherwise than in due course of law. It is a felony to aid a prisoner to escape (Prison Act, 1952, s. 39). It is an offence knowingly to harbor a person who has escaped from prison (Criminal Justice Act, 1961, ss. 22, 23). The escape of persons subject to approved school orders is dealt with in the Children and Young Persons Act, 1963, s. 10.

**escheat.** The reversion of land to the lord of the fee or the Crown on failure of heirs of the owner or on his outlawry. It is derived from the feudal rule that, where an estate in fee simple comes to an end, the land reverts to the lord by shoes ancestors or predecessors the estate was originally created. Escheat was abolished by the Administration of Estates Act, 1925, s. 45, and the right of the Crown to take as bona vacantia was substituted (ibid., s. 46).

**estate.** An interest in land. An absolute estate is one granted without condition or termination. A conditional estate is one liable to divest on the fulfillment of a condition. A contingent estate is one the right to the enjoyment of which will accrue on the happening of some event; and a determinable estate one that is liable to determine on the happening of some event. An estate in expectancy is one which cannot be enjoyed until some future time.

An estate in possession is one, which gives the right of present enjoyment, and a vested estate is one the right to the enjoyment of which has accrued. An estate in severalty is one held by a person singly, and an estate in common is one held by several persons jointly in undivided shares. A customary estate is one that existed in manors and boroughs by virtue of local custom: abolished by the Law of Property Act, 1922.
An estate in fee simple is one that is granted to “a man and his heirs,” and is the
greatest estate a subject of the Crown can possess. An estate of freehold is one
originally held by a freeman and subject to free services, and of uncertain duration;
e.g., for life, or for the life of another. An estate of inheritance is one capable of
descending to a man’s heirs, i.e., an estate in fee simple, fee tail or in frankalmoign.

**estoppel.** The rule of evidence or doctrine of law which precludes a person from
denyng the truth of some statement formerly made by him, or the existence to facts
which he has by words or conduct led others to believe in. If a person by a
representation induces another to change his position on the faith of it, he cannot
afterwards deny the truth of his representation. See QUASI-ESTOPPEL.

(1) Estoppel by record: a person is not permitted to dispute the facts upon which a
judgment against him is based.

(2) Estoppel by deed: a person cannot dispute his own deed; he cannot deny the
truth of recitals contained in it.

(3) Estoppel in pais, or equitable estoppel: estoppel by conduct, e.g., a tenant,
having accepted a lease, cannot dispute his lessor’s title.

(4) Equitable estoppel: a person who stands by and keeps silence when he
observes another person acting under a misapprehension or mistake, which by
speaking he could have prevented by showing the true state of affairs, can be
estopped from later alleging the true state of affairs. Thus an owner of goods
who voluntarily allows another to treat them as his own, without protest
whereby a third person is induced to buy them bona fide, cannot recover them
from that person. Similarly, if a stranger begins to build on land supposing it to
be his own, and the real owner, observing his mistake, abstains from setting
him right and leaves him to persevere in his error, equity will not afterwards
allow the real owner to assert his title to the land.

Estoppels provides a shield, not a sword: it cannot create a cause of action.
evidence. All the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation; as follows:

(1) Oral: statements made by witnesses in court.
(2) Documentary: including public and private documents, and statements of relevant facts made by persons in writing (see infra).
(3) Conclusive: evidence of a fact which the court must take as full proof of it, and which excludes all evidence to disprove it.
(4) Direct: evidence of a fact actually in issue; evidence of a fact actually perceived by a witness with his own senses.
(5) Circumstantial: evidence of a fact not actually in issue, but legally relevant to a fact in issue.
(6) Real: evidence supplied by material objects produced for the inspection of the court.
(7) Extrinsic: oral evidence given in connection with written documents.
(8) Hearsay: evidence of a fact not actually perceived by a witness with his own senses. See HEARSAY.
(9) Indirect: circumstantial or hearsay evidence.
(10) Original: evidence which has an independent probative force of its own.
(11) Derivative: evidence which its force from some other source.
(12) Parol: oral, extrinsic evidence.
(13) Prima facie: evidence of a fact which the court must take as proof of such fact, unless disproved by further evidence.
(14) Primary evidence of a document is the document itself, or duplicate original.
(15) Secondary: evidence other than the best evidence, and which is rejected if primary evidence is available; e.g., oral evidence of the contents of a lost document such as a will.
Evidence must be given in open court viva voce, but provision is made where a cause or matter is pending, for depositions to be taken from witnesses who will be unable to attend the hearing (Ord. 37). A statement in any document is admissible in evidence if it was made from personal knowledge or in compliance with a duty to record it, subject to the other conditions in the Evidence Act, 1938 (see Nokes, Introduction to Evidence).

ex abundanti cautela. [From excess of caution.]

ex aequo et bono. [In justice and good faith.]

ex cathedra. [From the chair.] With official authority.

ex contractu. [Arising out of contract.]

ex curia. [Out of court.]

ex debite justitiae. A remedy which the applicant gets as of right, e.g., a writ of Habeas Corpus.

ex delicto. [Arising out of wrongs.] Actions in tort.

ex diuturnitate temporis omnia praesumunt esse rite et solennitur acta. [From lapse of time, all things are presumed to have been done rightly and regularly.]

ex dolo malo non oritur action. [No right of action can have its origin in fraud.]

ex gratia. [As of favour.]

ex maleficio non oritur contractus. [A contract cannot arise out of an illegal act.]

ex mero motu. [Of one’s own free will.]

ex nudum pacto non oritur actio. [No action arises from a nude contract.] A contract entered into without consideration cannot be enforced.

ex officio. [By virtue of his office.]

ex parte. An application in a judicial proceeding made: (1) by an interested person who is not a party; (2) by one party in the absence of the other (see Ord. 54, r.1).

ex post facto. [By a subsequent act.] Retrospectively.

ex proprio motu. [Of his own accord.]
**ex provisione viri.** An estate tail of a wife in lands of her husband or his ancestors. Obsolete.

**ex relatione.** [From a narrative or information.] (1) A report of proceedings not from first hand knowledge; (2) proceedings at the relation or information of a person.

**ex turpi causa non oritur action.** [An action does not arise from a base cause.] e.g., an illegal contract is void. See ILLEGAL.

**examination.** The interrogation of a person on oath. In court, in general, the evidence of a witness is obtained by oral examination, called the examination-in-chief; he is then examined on behalf of the opposite party in order to diminish the effect of his evidence, called the cross-examination. Then he is again examined by the party calling him in order to give him an opportunity of explaining or contradicting any false impression produced by the cross-examination, called the re-examination, which is confined to matters arising out of the cross-examination.

**exception.** A saving clause in a deed so that the thing excepted does not pass by the grant. In procedure, to except to a thing was to object to or challenge it.

**excess profits duty.** A duty of inland revenue imposed by the Finance (No. 2) Act, 1915, ss. 38-42, and Sched. 4(1), and terminated by the Finance Act, 1921, ss. 35-42 (see Finance Act, 1926, s. 38).

**excess profits levy.** The duty of inland revenue imposed by the Finance Act, 1952, and repealed by the Finance Act, 1953.

**excess profits tax.** The tax imposed by the Finance (No. 2) Act, 1939, Part III, in respect of the amount by which the profits in any accounting period (beginning on or after April 1, 1939) from any trade or business carried on in the United Kingdom, or carried on, whether personally or by or through an agent, by persons
ordinarily resident in the United Kingdom, exceeded the standard profits (ibid., s. 12). The tax was terminated by Finance Act, 1946, s. 36.

**excess rents.** The amount by which rents exceeded the Schedule A assessment on land was assessable to income tax on the landlord under Case VI, Schedule D, up to and including 1963-64.

**exchange.** Mutual transfer or conveyance of property. The Exchange Control Act, 1947, prevents or controls payments to persons abroad. An exchange is a place where merchants, dealers or brokers meet to transact business; e.g., the London Stock Exchange

Exchequer. (1) Anciently, the Scaccarium, or chess board, from the cloth covering the table. A public office, formerly consisting of two divisions, the Exchequer of Receipt, and the Court of Exchequer (q.v.). The former managed the royal revenues, receiving and keeping the moneys due to the Crown, and seeing that the payments out were made on proper authority.

(2) The account with the Bank of England into which are paid all government receipts and revenues. The fund so formed is called the Consolidated Fund, out of which are paid the sums necessary for the public service, as authorized. By Parliament, subject to the control of the Comptroller and Auditor General (q.v.). See CHANCELLOR OF THE EXCHEQUER.

**execution.** (1) The act of completing or carrying into effect, particularly of a judgment, effected by writs of execution, orders and notices, which compel the defendant to do or to pay what has been adjudged. Writs of execution are addressed to the sheriff, whose function it is to carry them out. See ATTACHMENT; COMMITTAL; Delivery; FIERI FACIAS; POSSESSION; SEQUESTRATION.
(2) The execution of deeds is by the signing, sealing and delivery of them by the parties as their own acts and deeds, in the presence of witnesses. See EQUITABLE EXECUTION; WILLS.

**Executive.** The Crown in its administrative aspect; the Government Departments and their officials or officers under the Ministers of the Crown. The principal executive body in the Constitution is the Cabinet (q.v.).

In principle, the Executive is charged with putting into effect the laws enacted by the Legislature, subject to the judgments and orders of the Judiciary. In practice, the Legislature largely functions at the initiative of the Executive, and the Judiciary cannot interfere in purely administrative matters.

**exhibit.** A document or thing produced for the inspection of the court; or shown to a witness when giving evidence or referred to in a deposition: or a document referred to in, but not annexed to, an affidavit.

**extinguishment.** The cesser of a right or obligation, particularly by consolidation or merger. An easement is extinguished when the dominant and servient tenements become united in the same person.

**extortion.** The misdemeanour committed by a public officer, who, under colour of his office, wrongfully takes from any person any money or valuable thing. See also BLACKMAIL.

**extradition.** The delivery up of a person who has committed a crime in one country by the authorities of another country in which he has taken refuge, to the authorities of the country where the crime was committed. The law on the subject is contained in the Extradition Acts, 1870 to 1935, which define offences to which extradition applies and the procedure for surrender of offenders. No. Such proceedings can be taken
unless an extradition treaty has been concluded with the foreign state concerned. No criminal can be extradited for a “political” offence.

**extrajudicial.** Outside judicial procedure, e.g., distress; a dictum.

**F**

**f.o.b.** Free on board; a price quoted for goods including the cost of placing on board ship. It is a contract of sale of goods where the seller pays the cost of the shipment and makes delivery as soon as the goods are placed on board, the buyer bearing the risk of whether they are lost or not. The seller must give notice to the buyer to enable him to insure the goods. The risk does not pass to the buyer, nor does the property, until the goods are actually on board.

**factum.** An act or deed.

**fair comment.** A fair comment on a matter which is of public interest, or is submitted to public criticism, is not actionable as defamation (q.v.). The burden of proof is on the defendant setting up the plea. Comment is of the nature of criticism or opinion and must be distinguished from a statement of fact. Fair comment means comment honestly believed to be true, not inspired by any malicious motive, and not irrelevant. It must be based on facts truly stated. The Defamation Act, 1952, s. 6, provided that a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved, if the expression of opinion is fair comment having regard to such of the facts as are proved.

The “rolled-up plea” was: in so far as the statements complained of are statements of fact, they are true in substance and in fact; and in so far as they consist of comment, they are fair comment on a matter of public interest. This was a plea of fair comment only, and not of justification. The defendant must now, however, furnish particulars of
the words alleged to be statements of fact, and also of the facts relied on as supporting the allegation of truth.

**falsa demonstratio non nocet.** [A false description does not vitiate a document.]

Thus if part of a description is true and part false, if the true part describes the subject with sufficient certainty, the untrue part will be rejected or ignored.

**false imprisonment.** The confinement of a person without just cause or excuse. There must be a total restraint of the person; and the onus of proving reasonable cause is on the defendant.

**famosus libellus.** [A scandalous libel.]
**fauces terrae.** A narrow inlet of the sea; a gulf.
**fee.** Originally a feudal benefice; land granted to a man and his heirs in return for services to be rendered to the grantor.

**felony.** At common law, every species of crime, a conviction for which occasioned the forfeiture of the lands or goods of the offender, and the penalty for which was death (except petty larceny and mayhem). The Forfeiture Act, 1870, abolished forfeiture, however. Many offences were made felonies by statute. Now felonies are a category of crimes, ranking in seriousness below treason and above misdemeanours. Murder, manslaughter, burglary, house-breaking, larceny, bigamy, and rape, are felonies.

A person who is injured by the felonious act of another may not bring a civil action in respect of such act until the latter person has been prosecuted for the felony. But it is otherwise where the injury was not suffered by the person suing the wrongdoer for the damage caused by the felonious act. Also, a man may not enforce a claim to a benefit arising from his own felonious act, nor may his estate benefit.

**feud.** (1) A fee (q.v.). (2) An enmity or a quarrel.
**feudal system.** A state of society in which the main social bond is the relation between lord and man, a relation implying on the lord’s part protection and defence; on the man’s part protection, service, and reverence, the service including service in arms. This personal relation is inseparably involved in a proprietary relation, the tenure of land. The man holds of the lord, the man’s service is a burden on the land, the lord has important rights in the land (Maitland).

The King was the ultimate lord of all land. He granted land to his lords in return for military and other services, and they in their turn made further similar grants, the process being known as subinfeudation. The unit of land in the in the system was the manor, each under its lord, who had a right to services in labour and in kind from the villains, the servile tenants of the manor, over whom he exercised full jurisdiction. The lord in return owed them a duty of protection. The king had an overriding authority and claimed allegiance both form lords and their tenants.

**fiat.** [Let it be done.] A decree; a short order or warrant of a judge or public officer that certain steps should be taken.

**fiduciary.** The relationship of one person to another, where the former is bound to exercise rights and powers in good faith for the benefit of the latter; e.g., as between trustee and beneficiary. A court of equity will not allow a person in a fiduciary position (unless expressly so entitled) to make a personal profit or to put himself in a position where his duty and his interest conflict.

**fieri facias.** [Cause to be made.] A writ of execution direction directing the sheriff to whom it is addressed to levy from the goods and chattels of the debtor a sum equal to the amount of a judgment debt and interest. The sheriff makes a seizure and institutes a sale by auction.

**fieri feci.** The return by a sheriff to the writ of fieri facias that he has levied the sum named.
**fine.** (1) A sum of money ordered to be paid to the Crown by an offender, as a punishment for his offence.

(2) A money payment made by a feudal tenant to his lord; e.g., from a copyholder to the lord of the manor on being admitted to the copyhold estate. But the incidents of copyhold tenure were abolished by the Law of Property Act, 1922.

(3) A premium paid for the grant or renewal of a lease, or any foregift, payment, consideration or benefit in the nature of a premium (Law of Property Act, 1925, s. 205 (1) (xxiii)).

(4) A judicial proceeding used for conveying land. A fictitious suit was instituted and compromised with the consent of the court, and an agreement entered into between the parties as to the disposal of the land in question. A note of the proceedings was drawn up by an officer called the chirographer, and a document, called the “chirograph” or “foot” of the fine, which recited the whole proceedings, was enrolled in the records of the court and delivered to the purchaser as a deed of title. A fine was one of the methods of barring an estate tail. It could be used by a person not in possession of the land, but it resulted in the creation of a base fee only. Fines were abolished by the Fines and Recoveries Act, 1833.

**firm.** Persons who have entered into partnership with one another. The name under which their business is carried on is called the firm name (Partnership Act, 1890, s.4). An action may be brought by or against a firm in the name fo the firm (Ord. 48A, r.1). See BUSINESSNAMES.

**fishery or piscary.**

(1) a royal fishery is the exclusive right of the Crown of fishing in a public river.

(2) A public or common fishery is the right of the public to fish in the sea and in public navigable rivers as far as the tide flows.
(3) A several fishery is an exclusive right of fishing in a particular water, and vested either in the owner of the soil or in someone claiming under him.

(4) Common of fishery is the right of fishing in another man’s waters (e.g., the lord of the manor) in common with him. It is a profit’a prendre.

(5) A free fishery is either a Royal fishery granted to a subject, or a common of fishery.

flagrante delicto. [In the commission of the offence.] Provocation due to the sight by a husband of his wife in the act of adultery may reduce murder to manslaughter.

floating charge or security. An equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition it happens to be in from time to time. It is the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes.

Debentures issued by a company are often secured by a floating charge becomes a specific charge when a receiver is appointed, or possession is taken of any property comprised in the charge, or a winding up commences. It is then said to “crystallize,” and preferential debts thereupon become payable (Companies Act, 1948, s. 94).

folio. So much of a document as contains seventy-two words: so much of a will or copy as contains ninety words.

Foreclosure. When a mortgagor has failed to pay off the mortgage debt within the proper time, the mortgagee is entitled to bring an action in the chancery Division by writ or originating summons asking that a day may be fixed on which the mortgagor is to pay off the debt, and that in default of payment on that day the mortgagor may be foreclosed of his equity of redemption (q.v.). The court may make an order for foreclosure nisi (q.v.) for payment of the principal with interest and costs, usually within six, months, failing which an order absolute will be made, the land thereupon
becoming the property of the mortgagee. By section 88(2), Law of Property Act, 1925, an order absolute vests the legal estate in the mortgagee.

**foreign.** Outside the jurisdiction. Thus a “foreign plea” was a plea to the jurisdiction of the court.

**foreseeability.** “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would injure your neighbour – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question” (per Lord Atkin, Donoghue v. Stevenson [1932] A.C. 562 at 579). The test of “reasonable foreseeability” is applied in determining liability in tort, and contract and in murder.

**forfeiture.** The deprivation of a person of his property as a penalty for some act or omission. Formerly, prior to the Forfeiture Act, 1870, the goods and chattels of a person convicted of felony were forfeited to the Crown. A dealing with his estate by a feudal tenant in derogation of the right of his lord; e.g., a feoffment by a tenant for life, was a ground of forfeiture; the denial of the landlord’s title is so still. A forfeiture clause in a lease provides that on the breach of certain covenants the lease shall be at an end and the lessor may re-enter. Equity relieved against forfeitures designed to secure the performance of some collateral act; e.g., the payment of rent, when the court could give by way of compensation all that was required.

A lessor cannot enforce a proviso for forfeiture and re-entry unless he serves on the lessee a notice specifying the breach and requiring its remedy, and requiring compensation in money. Breach of a covenant not to deal with or dispose of the land leased formerly operated as a forfeiture, but now the tenant may apply to the court for relief (Law of Property Act, 1925, s. 146).
forgery. At common law, the fraudulent making or alteration of a writing to the prejudice of another man’s rights. By the Forgery Act, 1913, making a false document in order that it may be used as genuine, and the counterfeiting of a seal or die, is a felony.

franchise. (1) A liberty or privilege. At common law, a franchise is a royal privilege or branch of the Crown’s prerogative, subsisting in the hands of a subject, either by grant or by prescription. It is an incorporeal hereditament. It not only authorizes something to be done, but gives the owner the right of preventing others from interfering. Examples are the right to hold a market or maintain a ferry.

(2) The right to elect a Member of Parliament.

fraud. In general, fraud is the obtaining of a material advantage by unfair or wrongful means; it involves moral obliquity. It must be proved to sustain the common law action of deceit. Fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. To obtain damages for deceit it must be proved that the defendant intended that the plaintiff should act on the fraudulent misrepresentation, that he did act on it, and suffered damage in consequence. Fraud renders a contract voidable at the option of the injured party. See CONSTRUCTIVE FRAUD.

freight. The reward payable to a carrier by sea for the safe carriage and delivery of goods. If the ship is lost or abandoned so that there is no delivery there is no freight, except that freight payable in advance is not then recoverable. The shipowner has a lien on the goods carried for unpaid freight. See DEAD FREIGHT.

fresh suit. [Pursuit.] The following of a thing or person at once with the intention of reclamation.
**Frustration.** The discharge of a contract rendered impossible of performance by external causes beyond the contemplation of the parties. For example, a contract postponed by Government order would be discharged if the interference was so gross that when that when the time did arrive to resume work the parties would find themselves in completely different circumstances (Metropolitan Water Board v. Dick Derr [1917] 2K.B. 1). Money paid under a contract which is later frustrated and discharged may be recoverable as in quasi-contract (The Fibrosa Case [1943] A.C. 32).

The Law Reform (Frustrated Contracts) Act, 1943, provided that where a contract governed by English law becomes impossible of performance or “frustrated” and the parties thereto are discharged from its further performance, all sums paid to any party in pursuance of the contract before the time of discharge are recoverable as money had and received by him for the use of the party by whom the sums were paid. If the sums are unpaid they cease to be payable. But if the party to whom the sums were paid or payable has incurred expenses in or for the purpose of the performance of the contract, the court may allow him to retain or recover (as the case may be) the whole or part of such sums. Also where a party by reason of anything done by another party in or for the purpose of the performance of the contract has obtained a valuable benefit other than money, that other party may recover such sum as the court considers just.

This Act, however, does not apply to any contract to which s. 7 of the Sale of Goods Act, 1893, applies. This section provides that where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

**functus officio.** [Having discharged his duty.] Thus once a magistrate has convicted a person charged with an offence before him, he is functus officio, and cannot rescind the sentence and re-try the case.
G

Gage. A pledge or pawn. See MORTGAGE

garnish. (1) To warn. (2) To exact money from prisoners.

Gazette. The London Gazette is the official organ of the government for intimating appointments to public offices, and publishing Royal Proclamations, Orders in Council, statutory rules and orders, dissolutions of partnerships, proceedings in bankruptcy, etc. It is admissible in evidence for many purposes.

Geneva Convention. An international agreement entered into at Geneva in 1864 for the purpose of ameliorating the condition of sick and wounded soldiers in war. It was superseded by the Geneva Convention of 1906. It is under these conventions that the “Red Cross” has been used.

gift. A gratuitous grant or transfer of property. For a valid gift there must be an intention to give and such acts as are necessary to give effect to the intention, either by manual delivery of the chattels, or of some token part of the subject matter, or by such change in possession as would vest possession in the intended donee. It may be made by deed. Equity will not construe an imperfect gift as a declaration of trust (Richards v. Delbridge, L.R. 18 Eq. 11). See DONATIO MORTIS CAUSA.

Good behaviour. A person charged with an offence may be ordered to find sureties for good behaviour. A sum is forfeited to the Crown unless such person is of good behaviour for a certain period.

goods. All chattels personal other than things in action and money, emblements and things attached to or from part of the land which are agreed to be severed before sale or under the contract of sale (Sale of Goods Act, 1893, s. 62); anything which is
the subject of trade, manufacture, or merchandise (Merchandise Marks Act, 1887, s. 3).
Safely requirements may be imposed by regulations as to goods intended for sale (Consumer Protection Act, 1961). See SALE OF GOODS.

**grant.** (1) The assurance or transfer of the ownership of property, as distinguished from the delivery or transfer of the property itself. A conveyance is a deed of grant. It was the appropriate word for the conveyance of incorporeal hereditaments incapable of livery of seisin. By the Real Property Act, 1845, all corporeal hereditaments were deemed to lie in grant as well as in livery. By the Conveyancing Act, 1881 the use of the word “grant” was rendered unnecessary, and by the Law of Property Act, 1925, s. 51, all landlies in grant and is rendered incapable of being conveyed by livery (i.e., delivery).

(2) The allocation of rights, powers, moneys, etc., by the Crown or other authority, to particular persons or for particular.

**Great Seal.** By the Union with Scotland Act, 1706, it is provided that there shall be one Great Seal for the United Kingdom to be used for sealing writs to elect and summon the Parliament, and for sealing all treaties with foreign States, and all public acts, instruments and orders of State which concern the whole United Kingdom, and in all other matters relating to England, as the Great Seal of England was used before the union. It is in the custody of the Lord Chancellor.

**guarantee.** The person to whom a guaranty (q.v.) is given.
The memorandum of a company limited by guarantee must state that each member undertakes to contribute a specified sum towards the assets of the company in the event of a winding up while he is a member, or within one year after. Such companies are usually formed not for profit but to incorporate clubs or associations.
A person having the right and duty of protecting the person, property or rights of one who is without full legal capacity or otherwise incapable of managing his own affairs.

(1) Guardianship in chivalry was the right of the lord to hold the land of an infant tenant until majority.

(2) Guardianship in socage was the right of the next of blood to whom the inheritance could not descend, to the wardship of the land while the heir was under the age of fourteen.

(3) Guardianship by nature was that exercised by a father over the person of his son and heir apparent.

(4) A guardian by election is one chosen by an infant himself.

(5) A guardian by statute is one appointed by will pursuant to the statute 12 Car. 2, c. 24.

(6) A guardian ad litem is a person appointed to defend and action or other proceeding on behalf of an infant or person under a disability.

By the Guardianship of Infants Act, 1925, in proceedings before any court in questions relating to the custody, upbringing, etc., of infants, the welfare of the infant is to be the paramount consideration. Equal rights of applying to the court are given to the mother and father. On the death of the father of an infant, the mother, if surviving, is to be guardian of the infant, either alone or jointly with any guardian appointed by the father, or the court may appoint a guardian to act jointly with the mother. Corresponding provisions apply on the death of a mother. A father or mother may by deed or will appoint a guardian to act jointly with the surviving parent. The consent required for the marriage of an infant must be given by both parents, if surviving, or by the parent with the custody of the child if they are separated, otherwise by the surviving parent or a guardian. If such consent is refused the court may, on application made, consent to the marriage.

See the Guardianship and Maintenance of Infants Act, 1951. See also WARD OF COURT.
A guardian in tort is one who intrudes on an infant’s property and is accountable for profits received.

**guillotine.** An elaboration of the “Closure” in parliamentary procedure. Definite periods are allotted to the successive stages of a Bill, and at the end of each period the “guillotine” falls and closes the debate in respect of that stage.

**H**

**habeas corpus.** A prerogative writ directed to a person who detains another in custody and commands him to produce or “have the body” of that person before the court.

(1) Habeas corpus ad subjiciendum commands the person to whom it is directed to produce the body of the person detained with the day and cause of his caption and detention, ad faciendum, subjiciendum et recipiendum [to do, submit to and receive] whatever the court shall direct. Its use is for testing the legality of an imprisonment.

The Habeas Corpus Act, 1679, made the granting of a habeas corpus compulsory in the case of a person imprisoned without a legal cause being assigned in the warrant of committal, and provided for the speedy trial of persons imprisoned for treason or felony. The Habeas Corpus Act, 1816, provided for the issue and return of a habeas corpus in vacation as well as in term, and for examining into the truth of the facts stated in any return to a habeas corpus. The Haveas Corpus Act, 1862, enacts that no habeas corpus shall issue out of England into any colony or foreign dominion of the court having authority to issue the writ; subject to this limitation, the writ of habeas corpus runs into all parts of the dominions of the Crown.

The Administration of Justice Act, 1960, s. 14, provided that on a criminal application in respect of persons detained under Mental Health Act, 1959, Part V), an order for release of the person restrained may be refused only by the Divisional Court, whether the application is made in the first instance to that court or to a single judge; no second
application in respect of the same person on the same grounds can be brought except on fresh evidence. Sect.15 ibid. Provides for an appeal in all habeas corpus proceedings (Ord. 59).

(2) Obsolete forms of the writ: (a) Ad respondendum, to bring up a prisoner confined by the process of an inferior court, to charge him with a fresh action in the court above; (b) ad satisfaciendum, used with a similar object when judgment had been given in the inferior court against the prisoner; (c) habeas corpus cum causa (or ad faciendum et recipiendum), to remove, from an inferior court to the court above, an action in which the defendant had been arrested; (d) adprosequendum, testificandum, deliberandum, etc., to bring up a prisoner to bear testimony in any court, or to be tried in the proper jurisdiction.

**habitual criminal.** Formerly a person who, after attaining the age of sixteen years, had been three or more times convicted of certain crimes and who was proved to have been persistently leading a dishonest or criminal life. Such person might be sentenced to a term of preventive detention of from five to ten years to follow a sentence of penal servitude (Prevention of Crime Act, 1908, s. 10).

Under the Criminal Justice Act, 1948, the term “habitual criminal” is replaced by “persistent offender.” Where a person who is not less than twenty one is convicted on indictment of an offence punishable for a term of two years or more and has been convicted on at least two previous occasions since he attained seventeen, of offences punishable on indictment with such a sentence; then if the court is satisfied that it is expedient with a view to his reformation and the prevention of crime that he should receive corrective training, the court may pass, in lieu of any other sentence, a sentence of corrective training for not less than two nor more than four years (ibid., s. 21).

Also a person who is not less than thirty and similarly convicted, and has been convicted on indictment on at least three previous occasions since he attained
seventeen, and at least twice sentenced to Borstal training, imprisonment, or corrective training; then if the court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial time, the court may pass in lieu of any other sentence, a sentence of preventive detention for not less than five nor more than fourteen years.

**hawker.** A traveling seller of goods: (Hawkers Act, 1888, s. 1).

**hearsay.** What someone else has been heard to say: “what the soldier said”; as contrasted with the direct evidence of a witness himself; oral or written statements made by persons not called as witnesses (Phipson). Hearsay evidence is, in general, excluded, but the repletion of another person’s statement is sometimes permissible, and there are express exceptions to the rule against hearsay. (See Nokes, Introduction to Evidence.)

Heir or heir-at-law. He who succeeded by right of blood to the real property of an ancestor on intestacy. The general rules of descent were laid down in the Inheritance Act, 1833. (See DESCENT.) (1) A customary heir or special heir was one who inherited by virtue of a custom, such as gavelkind or borough—English; (2) an heir general was one who took by descent as fixed by law, as opposed to (3) an heir special or heir in tail, who claimed as issue in tail according to the nature of the estate tail. See ENTAIL.

By the Administration of Estates Act, 1925, s. 45, all existing modes, rules and canons of descent were abolished, and real estate was assimilated to personal property, and both devolve as laid down by section 46. By the Law of Property Act, 1925, s. 132, a limitation of real or personal property in favour of the heir, either general or special, which would have conferred on the heir an estate before the Act, confers a corresponding equitable interest on the person who would have been heir but for the Act. See INTESTATE SUCCESSION.
**High Commission.** The court established in 1583, to inquire into all offences against the Acts of Supremacy (1 Eliz. 1, c. 1) and Uniformity (1 Eliz. 1, c. 2) and other offences of wide scope. It was abolished by 16 Car. 1, c. 11.

**High Commissioner.** The chief representative in the United Kingdom of Canada, Australia, New Zealand, India, Pakistan, Ceylon and the Republic of Ireland. See the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, s. 1.

**High court of Justice.** The High Court of Justice exercises the former jurisdiction of the Court of Chancery, the Courts of Queen’s Bench, Common pleas and Exchequer, the Courts of Probate, Divorce and Admiralty, the London Court of Bankruptcy, the Court of Common pleas at Lancaster, the Court of Pleas at Durham, and the courts of the judges or commissioners of assize. It is a Superior Court of Record, with the Lord Chancellor as President.

The High Court was originally divided into five divisions, viz., the Chancery Division, the Queen’s Bench Division, the common Pleas Division, the Exchequer Division, and the Probate, Divorce and Admiralty Division. An Order in Council of 1881 abolished the offices of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron, and consolidated the Queen’s Bench, Common Pleas and Exchequer Divisions into one Division called the Queen’s (or King’s) Bench Division, under the presidency of a Lord Chief Justice. An appeal lies to the Court of Appeal from all judgments and orders of the High Court in its ordinary jurisdiction. See the Judicature Act, 1925.

The maximum number of puisne judges of the High Court is fifty-three (Criminal Justice Administration Act, 1962, s. 1).

High seas. The seas or open salt water beyond the distance of three miles from the coast of any country. The majority of States claim territorial jurisdiction over the seas within three miles of their coasts, but beyond that limit the high seas are said to be
free. But there are qualifications to the doctrine. Some countries e.g. Iceland, claim exclusive fishing rights over the seas within twelve miles from their coasts. A State assumes jurisdiction over its own ships, pirates, and foreign vessels which have violated, or are about to violate, its laws, and in time of war exercise the right of visit and search over neutral ships. See TERRITORIAL WATERS.

Highway. A road or way opens to the public as of right for the purpose of passing and reassign. Nuisance in reference to highways is an act or omission whereby the public are prevented from using their right. The ownership of the soil may be private, e.g., in the owner of the land adjoining the highway. A highway may be founded on prescription, statute, or by dedication to the public by the owner.

The duty to repair the highway at common law was on the inhabitants of the parish; now under the consolidating Highways Act, 1959, the duty to repair is transferred to the Minister of Transport, or the appropriate local authority, according to the classification of the road. Formerly, a local authority was not liable for injuries caused to users of the highway by its own non-feasance (e.g., non-repair of the surface), but this rule is abolished as from August 3, 1964 (Highways (Miscellaneous Provisions) Act, 1961, s.1).

The occupier of land has no duty of care to prevent the escape or straying of animals on to the highway, but he has as regards dogs. But once a person brings an animal on to the highway, he must take reasonable care to control it there (Gombersg v. Smith [1963] 1 Q.B. 25).

**holding company.** A company which has a subsidiary company; i.e., where the holding company is a member of it, and controls the composition of its board of directors, or holds more than half in nominal value of its equity share capital (Companies Act, 1948, s. 154). Group accounts are to be laid before the holding company in general meeting (ibid., 150-153),
**homage.** (1) The tenants of a manor assembled in a customary court (2) A most honourable and humble service of reverence, which every free tenant for an estate in fee simple or fee tail was bound to perform to his feudal lord by kneeling and saying, “become your man of life and limb.” Homage created an obligation of assistance by the tenant to his lord, and of protection by the lord to his tenant. Abolished as an incident of tenure of land by 12 Car. 2, c. 24.

**homicide.** Unlawfully killing a human being under the [Queen’s] peace, the death following within a year and a day. It is punishable by imprisonment for life. See also MURDER.

(1) Felonious Homicide. (a) Death caused by an act done with the intention of causing death or bodily harm, or known to be likely to cause death or bodily harm, without legal justification or excuse; (b) Death caused by an omission, amounting to culpable negligence, to discharge a duty tending to the preservation of life, whether accompanied by an intention to cause death or bodily harm or not; (c) Death caused accidentally by an unlawful act.

(2) Excusable Homicide. Where the person by whom the homicide is committed is not criminally responsible. It is either by misadventure, or in self-defence to a non-felonous attack where further retreat is impossible.

(3) Justifiable Homicide. Where homicide is committed without blame, in the execution of a legal duty, or in furtherance of a legal purpose; e.g., putting a person to death in pursuance of a legal sentence.

**Hors de la loi.** Outlawed.

**hotchpot.** A blending of properties for the purpose of securing an equal division; a mixture or medley. Where a fund in appointed to be divided amongst a class and one of the class has already received a special or appointed share, that person may be required to add his special share to the fund (for the purpose of computing the share of each beneficiary) before it is distributed, and he is then said to bring his special share into hotchpot.
A “hotchpot provision” is a clause in a settlement, etc., requiring this procedure to be carried out before the beneficiary, who has received prior payments or benefits on account, can share further in the fund to be distributed. See, e.g., Law of Property Act, 1925, s. 157, proviso.

**House of Commons.** The Lower House of Parliament, now consisting of representatives of country and borough constituencies. By virtue of the House of Commons (Redistribution of Seats) Acts, 1949, 1958, and Orders in Council made there under, the total membership is 630. Persons disqualified from membership are: aliens; infants; the mentally ill; peers; ordained clergy of the Church of England or of Ireland, or of Rome; felons; bankrupts; and candidates guilty of corrupt and illegal practices (Representation of the People Act, 1949).

Those disqualified under the House of Commons Disqualification Act, 1957, are: holders of specified judicial offices; civil servants; members of the armed forces, police forces, foreign legislatures and of certain commissions and tribunals and the holders of specified other offices. Members receive a salary and an expenses allowance (tax free) up to 750 a year. See also PARLIAMENT; SPEAKER.

**House of Lords.** The Upper House of Parliament; the assembly of the lords spiritual and temporal. The lords spiritual are the two archbishops and the senior bishops of the Church of England. Other members of the House are the peers and peeresses in their own right of England, Great Britain and the United Kingdom, the representative peers of Ireland, and the Life Peers (q.v.). (See the Peerage Act, 1963, ss. 4, 6) The Lord Chancellor is Speaker and president of the House.

The House of Lords exercises judicial authority in claims of peerage. Any person who succeeds to a hereditary peerage may, within twelve months, by an instrument of disclaimer, disclaim that peerage for his life (ibid., s. 1).
The House is the Supreme Court of Appeal from the Court of appeal in England, and the Superior Courts of Scotland and Northern Ireland. Appeals are heard by the Appellate Committee, which usually consists of five, or three, Law Lords. They give written judgments. In criminal cases the defendant or the prosecutor may appeal to the House of Lords from the decisions of the Court of Criminal Appeal or the Divisional Court, with leave, if a point of general public importance is involved which ought to be considered by the House (Administration of Justice Act, 1960, s. 1)

**hue and cry.** The old common law process of pursuing, with horn and with voice all felons and such as have dangerously wounded another. All those who join in a hue and cry are justified in apprehending the person pursued, even though it should turn out that he is innocent. Maliciously or wantonly to raise a hue and cry is a misdemeanour and grounds for a civil action.

**Husband and wife.** The old common law rule was that a husband and wife were one person. A husband on his marriage became absolutely entitled to all chattels and choses in possession belonging to his wife in her own right, and to a life interest in her inheritable freehold estates. A wife’s choses in action did not vest in the husband unless he reduced them into possession. The husband could dispose of his wife’s concurrence. His concurrence was necessary in any disposition by the wife of her real property. In equity, however, property conveyed to trustees or the husband for the “separate use” of the wife became her separate property, disposable by her as if a feme sole. The husband had a right to the personal custody of his wife, and to sexual intercourse with her.

The Matrimonial Causes Act, 1857, protected property acquired by a wife whilst living apart from her husband under a decree for judicial separation or a protection order. The Married Women’s Property Act, 1882, provided that thenceforward all the property of a married women should be her separate property. By the Law of Property Act, 1925, s. 37, husband and wife are two persons in regard to property acquisitions.
By the Law Reform (Married Women and Tortfeasors) Act, 1935, s. 1, it was provided, with certain exceptions, that a married woman should be capable of acquiring, holding and disposing of property as if she were a feme sole.

Money or property derived from housekeeping allowance belongs normally to the husband and wife in equal shares (Married Women’s Property Act, 1964).

At common law husband and wife could not sue each other in tort, but the wife could sue husband for the protection of her property Married Women’s Property Act, 1882, s. 12). By the Law Reform (Husband and Wife) Act, 1962, s. 1, however, each of the parties to a marriage has the same right of action in tort as though they were not married, except that proceedings may be stayed if unwarranted, or if they concern questions of property. A married woman is liable for her torts, and is subject to bankruptcy law, and to the enforcement of judgments and orders as if a feme sole (Law Reform (Married Women and Tortfeasors) Act, 1935).

Under the Married Women’s Property Acts, 1882 and 1892, a married women had full capacity to contract; but such a contract was only binding on her to the extent of her separate estate. Payment of her debts could not therefore be enforced against her personally; e.g., by committal to prison (Scott v. Morley (1887) 20 Q.B.D. 120). The 1935 Act in effect abolished the distinction between a married woman and a man or single woman in regard to their debts, and a married woman is personally bound by her contracts (s. 1). A husband is not liable for his wife’s contracts (s. 3), except her contracts as his agent or for necessaries (s. 4).

Husband and wife cannot be guilty of conspiring together, or of larceny from each other while living together. Matrimonial communications are privileged. One spouse is not normally compellable to give evidence against the other, but may give, in general, evidence on behalf of an accused spouse (Matrimonial Proceedings (Magistrates’ Courts) Act, 1960). See also COERCION.
At common law, a British woman lost her British nationality if she married an alien. Under the statutory concept of “citizenship” introduced by the British Nationality Act, 1948, she is in the same general position as a man. Shortly, the position now is that a British woman who marries an alien retains her British nationality unless she elects to renounce it, while an alien woman who marries a United Kingdom citizen does not automatically acquire British nationality, but by registration can do so. See RESTRAINT ON ALIENATION.

**husbandry.** Farming.

I

**IOU.** (I owe you.) A written acknowledgment of a debt. It is not a negotiable instrument.

**ibid.** (ibidem). [In the same place.]

**id certum est quod certum redid potest.** [That is certain which can be made certain.]

**idem.** [The same.]

**idiot.** A person in whose case there exists mental defectiveness of such a degree that he is unable to guard himself against common physical dangers. See now MENTAL DESORDER; PATIENT.

**Ignorantia eorum quae quis scire tenetur non excusat.** [Ignorance of those things which everyone is bound to know does not constitute an excuse.]

**Ignorantia juris quod quisque scire tenetur non excusat.** [Ignorance of the law which everybody is supposed to know does not afford excuse.]
illegal. Unlawful; an act which the law forbids, as to commit a murder, or to obstruct a highway, as opposed to an act or state of things which the law disregards, or does not recognize as capable of giving rise to rights. Thus a contract made ultra vires is void, but not illegal. A cheque given in payment of a bet is given for an illegal consideration and the payee cannot sue thereon, but it is not illegal to give the cheque or pay the lost bet.

immorality. Contracts based on sexual immorality such as agreements for future illicit cohabitation or a contract to supply goods to a prostitute knowingly for the purposes of her profession, are void (Pearce v. Brookes (1866) L.R. 1 Ex. 213).

A conspiracy to corrupt public morals is a common law crime, as by the publishing of advertisements of prostitutes for gain (Shaw v. D. P.P. [1961] 2 W.L.R. 897 (The Lades Directory). See also OBSCENITY; PROSTITUTION.

impeachment. A solemn accusation of a great public offence, especially against a minister of the Crown. The House of Commons first found the crime, and then as prosecutors supported their charge before the House of Lords, who tried and adjudicated upon it. Impeachment is practically obsolete, the last being in 1805.

implication. The inference from acts done or facts ascertained of the existence of an intention or state of things which may or may not exist in fact, but which is presumed by the law to exist. Examples: an implied warranty, trust or authority; a life estate by implication.

implied trust. A trust implied by law as founded upon the unexpressed but presumed intention of the party. It includes resulting trusts (q.v.) and constructive trusts (q.v.).
impossibilium nulla obligato est. [Imp possibility is an excuse for the non-performance of an obligation.] See IMPOSSIBILITY.

impotentia excusat legem. [Impotency excuses law.] To an obligation imposed by law, impossibility of performance is a good excuse.

imprisonment. The restraint of a person’s liberty by another. It includes confinement in a goal or house or seizing or holding a man in a street, etc. Imprisonment as a punishment consists in the detention of an offender in prison and subjecting him to discipline for the term of his sentence. See the Criminal Justice Acts, 1948, 1961 See RALSE IMPRESONMENT.

in aequali jure melior est conditio possidentis. [Where the rights of the parties are equal, the claim of the actual possessor is the stronger.]

in ambiguis orationibus maxime sentential spectanda est ejus qui eas protulisset. [In dealing with ambiguous words the intention of him who used them should especially be regarded.]

in camera. The hearing of a case in private; e.g., in court, the public being excluded; or in the judge’s private room. Criminal cases must be heard in public, but divorce and civil causes may be heard in camera if necessary to secure due administration of justice. It is a usual course in the Chancery Division, where private family matters are involved. In nullity of marriage proceedings, evidence as to sexual capacity is normally to be heard in camera (Matrimonial Causes Act, 1950, s. 32 (4).

in casu extremae necessiatis omina sunt communia. [In cases of extreme necessity, everything is in common.]

in consimili casu. [In like case.] The Statute of Westminster II, 1288 (13 Edw. 1, c. 24), enacted that when a writ was found in Chancery, where original writs were
prepared for suitors by the clerks, but in a like case falling under the same right and requiring the same remedy no writ was to be found, the clerks should agree in making a new writ, or, if they could not agree, they were to refer the matter to Parliament. See also ACTION ON THE CASE.

_in contractis tacite insunt quae sunt moris et consuetudinis._ [The clauses which are in accordance with custom and usage are an implied part of every contract.]

_in conventionibus contrahentium voluntas potius quam verba spectari placuit._ [In construing agreements the intention of the parties, rather than the words actually used, should be considered.]

_in curia._ [In open court.]

_in custodia legis._ [In the custody of law.]

_in esse._ [In being.] Actually existing.

_in extenso._ [At full length.]

_in forma pauperis._ [In the character of a pauper.] See POOR PERSON.

_in futuro._ [In the future.]

_in gremio legis._ [In the bosom of the law.]

_in invitum._ [Against a reluctant person.]

_in jure non remota causa, sed proxima spectatur._ [In law the proximate, and not the remote, cause is to be regarded.]

_in limine._ [On the threshold.] See POSTLIMINIUM.

_in loco parentis._ [In the place of parent.] One who assumes the liability for providing for an infant in the way a parent would do.

_in media res._ [In the midst of the matter.]

_in misericordia._ [At mercy.] See AMERCIAMENT.

_in nomine._ [In the name of.]

_in pais._ [In the country.] Without legal proceedings or documents. Trial per pais means trial by the country, i.e., trial by jury. See ESTOPPEL; JURY.
in part causa petior est conditio possidentis. [Everyone may keep what he has got, unless and until someone else can prove a better title.]

in pari delicto, potior est conditio possidentis. [Where both parties are equally in fault, the condition of the possessor is the best.]

in pari materia. [In an analogous case.]

in perpetuum. [For ever.]

in personam. An act, proceeding or right done or directed against or with reference to a specific person, as opposed to in rem (q.v.). The right of a beneficiary is primarily a right in personam against his trustee. The Court of Chancery acted in personam by means of its decrees compelling, or restraining, specific acts by the person concerned.

in pleno. [In full.]

in posse. A thing which does not actually exist, but which may exist.

in praesenti. [At the present time.]

in propria persona. [In his own proper person.]

in re. [In the matter of.]

in rem. An act, proceeding or right available against the world at large, as opposed to in personam. A right of property is a right in rem. An admiralty action is a proceeding in rem when the ship itself is arrested and adjudicated upon.

in situ. [In its original situation.]

in specie. In its own form and essence, and not in its equivalent. In coin as opposed to paper money.

in statu quo. [In the former position.]

in terrorem. A condition in a will or gift which is intended to frighten or intimidate; it is void.

in totidem verbis. [In so many words.]

in toto. [Entirely; wholly.]
in transitu. [In course of transit.] See STOPPAGE IN TRANSITU.

incendiarism. Arson (q.v.).

incerta persona. [Roman Law.] A person that is not a specific living, individual; an indeterminate person. A legatee was held to be indeterminate when testator added him with an indeterminate notion in his mind, as, e.g., the man who comes first to my funeral.

incest. Sexual intercourse between a male person and his grand-daughter, daughter, sister, or mother, or between a female person, of or above the age of sixteen, and her grandfather, father, brother, or son, with her consent and permission. It is immaterial whether the relationship is or is not traced through lawful wedlock, but the accused must know of the relationship. It is a misdemeanour (Sexual offences Act, 1956, ss. 10, 11).

incident. A thing appertaining to or following another. Thus a rent may be incident to a reversion, though it may be separated from it; that is, the one may be conveyed without the other.

incitement. Incitement to commit a crime is a common law misdemeanour, even though the crime be not committed. If the crime be actually committed, the person inciting is an accessory before the fact in the case of felony, and equally guilty, in the case of treason or misdemeanour, with the person who commits the crime.

inclusio unius est exclusio alterius. [The inclusion of one is the exclusion of another.]

income tax. A duty or tax on income or profits. The Acts relating to income tax and surtax were consolidated by the Income Tax Act, 1952. The tax is imposed each year by the annual Finance Act. Income tax is levied in respect of income from the sources
classified in five Schedules as follows, each Schedule having its own set of rules (ibid., s. 1).

(1) Schedule A (ibid., s. 82). Tax in respect of the property in or ownership of lands and houses. The tax was charged on the occupier for the time being, who, if he was a tenant, deducted tax when paying his rent. The annual value of the property was the basis of charge.

By the Finance Act, 1963, s. 14, the charge to tax on owner occupiers was abolished, and Schedule A ceased to have effect, except for transitional provisions for 1963/64. (For 1964/65, see Schedule D, Case VII, infra.)

2. Schedule B (ibid, s. 83). Tax in respect of the occupation of lands; e.g., as parklands or woodlands. The tax was charged on the occupier of the lands and is based on the assessable value of the land, which was one-third of the annual value. Farming, etc., is charged under Sched. D (ibid., s. 124).

By the Finance Act, 1963, s. 28, the charge to tax under Schedule B is restricted to woodlands managed on a commercial basis, but with an option of assessment under Schedule D.

(3) Schedule C (ibid., s. 117). Tax in respect of the amount received by way of interest or income from any public revenue or funds. The Tax is deducted by the paying agent at the time of payment of the income to the person entitled to it.

(4) Schedule D. (ibid., ss. 122-135). Tax on income or profits derived from trades and professions, etc., and from income not included in any other Schedule. It is divided into Cases as follows: Case I: trades; Case II: professions; Case III: untaxed interest and profits of an uncertain value, etc.; Case IV: income from foreign securities; Case V: income from foreign possessions; Case VI: miscellaneous profits not otherwise charged; e.g., profits from letting furnished houses. The tax is charged on the person in receipt of or entitled to the income, and is based, in general, on the actual income of the preceding year.

Case VII: short term gains (q.v.).
Case VIII: profits arising from rents and income receipts from land, and premiums arising from leases are assessable, less expenses, under this case for 1964/65 and onwards (Finance Act, 1963, ss. 15 et seq.).

(5) Schedule E (ibid., s. 156). The tax on emoluments from offices or employments and pensions, based on the income of the actual year. Tax is charged in respect of employments exercised in the United Kingdom, by persons ordinarily resident therein. A person not ordinarily so resident is charged on earning in the United Earnings from employments exercised from employments exercised abroad are assessable if received here by persons resident here. See also P.A.Y.E.

The are exemptions from the tax in favour of charities etc., and of persons of small means. Relief’s may be claimed by individuals according to their personal circumstances; e.g., in respect of children, with the result that the standard rate of tax fixed for any year is not the effective rate of tax charged on the individual’s total income.

The income tax year of assessment runs from April to April. The tax is managed by the Commissioner of Inland Revenue, Inspectors of Taxes being their subordinate local officers. A person who is aggrieved by the amount of the assessment upon him, or by the refusal of his claim for allowances, may appeal to the local General Commissioners (q.v.) or, in certain cases, to the Special Commissioners (q.v.). A person who is dissatisfied with the decision of the General or Special Commissioners may, in general, appeal by case stated to the High Court (ibid., s.). See also PROFITS TAX; SURTAX; TAX.

**incorporation.** Merging together to form a single whole; conferring legal personality upon an association of individuals, or the holder of a certain office, pursuant to Royal Charter or Act of Parliament.
**incumbent.** A rector with cure of souls, vicar, perpetual curate, curate in charge or minister of a benefice.

**indemnify.** To make good a loss which one person has suffered in consequence of the act or default of another. See Mercantile Law Amendment Act, 1856, s.5.

**indemnity.** A collateral contract or security to prevent a person from being damnedified by an act or forbearance done at the request of another. See ACT OF INDEMNITY.

**indenture.** A document written in duplicate on the same parchment or paper, and divided into two by cutting through in a wavy line. The two parts could be fitted together to prove their genuineness, and were known as counterparts. A deed between parties to effect its objects has the effect of an indenture though not indented or expressed to be an indenture, and any deed, whether or not being an indenture, may be described as a deed simply (Law of Property Act, 1925, ss. 56 (2) 57). See COUNTERPART.

**indictment.** A written accusation of one or more persons of a crime, at the suit of the Queen formerly presented on oath by a grand jury. Indictments were highly technical in form, but the Indictments Act, 1915, provided that particulars should be set out in ordinary language in which the use of technical terms should not be necessary. An indictment consists of three parts: (1) the commencement indicating the venue; (2) the statement of offence; (3) particulars of the offence.

A bill of indictment charging a person with an indictable offence may not be preferred unless either the person charged has been committed for trial for the offence (Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 2 (2) (a)), or the bill is preferred by the direction or with the consent of a High Court judge. See BILL OF INDICTMENT.
**indorsement.** A writing on the back of an instrument, Indorsement is a mode of transference of bills of exchange, bills of lading, etc., consisting of the signature of the person to whom the instrument is payable on the back of the instrument and delivery to the transferee (called an indorsement in blank). A special indorsement specifies the name of the transferee. See WRIT OF SUMMONS.

**inevitable accident.** An accident which cannot be avoided by the exercise of ordinary care, caution and skill.

**infamous crime.** An abominable crime (q.v.). Any crime punishable with death, or imprisonment for not less than 7 years; any assault with intent to commit rape, attempting rape, and any solicitation or threat offered to commit or permit an unnatural offence. (See the Larceny Act, 1916, s. 29).

**infant.** A person under the age of twenty-one years. He becomes of full age from the first moment of the day preceding the twenty-first anniversary of his birth. An infant has not full legal capacity.

The Infants Relief Act, 1874, provided that contracts entered into by infants for the repayment of money lent or goods supplied other than necessaries, and all accounts stated shall be null and void and incapable of ratification on the attainment of full age.

By the Betting and Loans (Infants) Act, 1892, a promise after majority to repay money borrowed during minority is void as against all parties thereto, except to the extent of any money actually lent after majority. Other contracts are voidable by the infant unless for necessaries (q.v.). or for his benefit, being a service or apprenticeship agreement (Clements v. L. & N. W. Ry. [1894] 2 Q.B. 482).

Contractual obligations attaching to property of which an infant becomes possessed are binding so long as he possesses the property, but he may repudiate the property and with it the obligations within a reasonable time after attaining majority. (London
& North Western Ry. v. M’ Michael (1850) 5 Ex. 114). An infant may take up shares in a limited company and may repudiate all liability on attaining majority (Hamilton v. Vaughan Sherrin Co. [1894] 3 Ch. 589), but the infant cannot recover money paid for them unless there has been a total failure of consideration (Steinberg v. Scala (leads) Ltd. [1923] 2 Ch. 452). If an infant has paid for property and has consumed it or altered its condition, he cannot recover money paid for it (Valentini v. Canali (1889) 24 Q.B.D. 166). The other party to a contract, if adult, is bound (Holt v. Ward (1732) 2 Str. 937).

An infant is liable in tort, but where a tort arises out of a contract an infant is not liable in tort as an indirect way of enforcing an invalid contract (leslie v. Shiell [1914] 3 K.B. 607). Where and infant induces another to contract with him by fraudulently representing that he is of full age, the infant must make equitable restitution, but is not liable in tort for deceit: see however, Stocks v. Wilson [1913] 2 K.B. 35.

An infant cannot make a will (Wills Act, 1837, s. 7) but by ibid., s. 11 and the Wills (Soldiers and Sailors) Act, 1918, if he is a soldier in actual military service, or a seaman at sea, he may make a valid will.

By the Law of Property Act, 1925, s. 1, a legal estate inland cannot be held by an infant, nor may he be an estate owner; ibid., s. 205 (2). In regard to land which it is desired that the infant should hold beneficially, a trust for sale or a settlement as may be appropriate must be created in accordance with the Settled Land Act, 1925. On an intestacy, the administrator holds on trust for sale, and even if the sole beneficiary is an infant he cannot take an absolute interest until he becomes of age or marries under that age (Administration of Estates Act, 1925, s. 47).

An infant cannot be an executor (Judicature Act, 1925, s. 165). An infant sues by a “next friend” and defends by a guardian ad litem (Ord. 80). See also CHILD.
infanticide. The killing of a newly born child. The Infanticide Act, 1938, provides that where a woman by any willful act or omission causes the death of her child, being a child under the age of twelve months, but at the time the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child, or by reason of the effect of lactation consequent upon the birth of the child, then she shall be guilty of infanticide and punishable as for manslaughter, if but for the Act she might have been convicted of murder. It is an offence to destroy a child which has not yet had a separate existence (Infant Life preservation Act, 1929). See also CONCEALMENT OF BIRTH.

information. A pleading; a step by which certain civil and criminal proceedings are commenced. In Chancery proceedings on behalf of the Crown the information was the statement of facts offered by the Attorney-General to the court (see Ord. 1, r.1). In the Exchequer Division there was a proceeding under the equitable jurisdiction of the court (now the Revenue side of the Queen’s Bench Division) to recover damages or money due to the Crown and known as the English Information (see the Crown suits Act, 1865, and the rules of March 14, 1866). The more usual form of proceeding by the Crown to recover a debt was by way of Latin Information on the Revenue side of the King’s Bench Division. Latin Informations and English Informations were abolished by the Crown Proceedings Act, 1947 (1st Sched.)

In criminal procedure, informations are brought to enforce a penalty or forfeiture under a penal statute. They may be filed ex officio by the Attorney-General in the Queen’s Bench Division in respect of crimes affecting the Government. Informations could formerly be filed by the Master of the Crown Office upon the relation of a private person in respect of public misdemeanours: abolished by the Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 12.

Informations are the normal method of instituting criminal proceedings before justices of the peace. They need not be on oath unless so required by some particular statute, or unless a warrant for arrest is required (Magistrates’ Courts Act, 1952, s. 1).
infra. [Below.]

infringement. Interference with, or the violation of, the right of another, particularly the right to a patent or copyright. The remedy is an injunction to restrain future infringements, and an action for the recovery of the damages caused or profits made by the past infringements.

ingenuus. (Roman Law.) A free-born man; a man free from the moment of his birth; being born in wedlock the son of parents either freeborn or made free.

inheritance. An estate in land which descends from a man to his heirs. See WILL.

injunction. An order or decree by which a party to an action is required to do, or refrain from doing, a particular thing. Injunctions are either restrictive (preventive) or mandatory (compulsive). As regards time, injunctions are either interlocutory (or interim) or perpetual. A perpetual injunction is granted only after the plaintiff has established his right and the actual or threatened infringement of it by the defendant; an interlocutory injunction may be granted at any time after the issue of the writ to maintain things in statue quo. The court must be satisfied that there is a serious question to be tried at the hearing, and that on the facts the plaintiff is probably entitled to relief (Ord. 50).

Injunctions were formerly granted only by the Chancery Court, but are now available in any division of the High Court (Judicature Act, 1925, s. 45). An injunction, once granted, is enforced by committal for contempt of court for any breach. See COMMON INJUNCTION.

injuria. [A legal wrong.]

injuria non excusat injuriam. [One wrong does not justify another.]
**injurious falsehood.** Salmond’s term for Malicious Falsehood (q.v.).

**inquest.** An inquisition. An inquiry held by a coroner with a jury as to the death of a person who has been slain, or has died suddenly, or in prison, or under suspicious circumstances. If the jury find a person guilty of murder or other homicide, it is equivalent to an indictment.

**inquiry.** In actions in the High Court, if an inquiry is ordered, it is made in Chambers by the master or other officer who investigates the evidence adduced by the parties, and embodies the result in his certificate (Ord. 33, r. 2).

**insanity.** Unsoundness of mind; mental disease. An insane person in non compos mentis, and was termed a lunatic. Later the term ‘person of unsound mind’ came into use, and a person might be so found by inquisition. A person of unsound mind is without legal capacity, and is not civilly responsible for his acts, except that he can make a will in a lucid interval. His contract is valid; unless he was incapable of appreciating the nature of the contract, and the other party was aware of it, when the transaction is voidable at his option. Pursuant to the Mental health Act, 1959, an insane person is termed a “patient.” When an accused person is found guilty of an offence, but insane, the jury bring in a verdict of “guilty, but insane,” and the accused is detained during Her Majesty’s pleasure. A person found to be insane after conviction is not executed. (But see Criminal Procedure (Insanity) Bill, 1964, now before Parliament.)

Every man is to be presumed sane until the contrary is proved. To establish a defence on the ground of insanity it must be clearly proved that at the time of the committing of the act the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature or quality of the act he was doing, or, if he did know it, that he did not know he was doing wrong (M’Noghten’s Case, 10 Cl. & Fin. 200). The fact that a person suffers from delusions
will not of itself exempt him from punishment, if he knew at the time of committing the crime that he was acting contrary to law.

For the treatment of “patients” and care of their property, see now the Mental Health Act, 1959. See MENTAL DISORDER.

**insolvency.** The inability to pay debts in full. Prior to the Bankruptcy Act, 1861, bankruptcy only applied to traders, and other persons in a similar condition were said to be insolvent. (q.v.).

**insolvent.** A person who is unable to pay his debts as they become due. As to companies, see WINDING UP.

**instalment.** A part or portion of the total sum or quantity due. arranged to be taken on account of the total sum or quantity due.

**instance, court of first.** A court in which proceedings are commenced, as distinct from an appellate court.

**instrument.** A formal legal document in writing; e.g., a deed of conveyance.

**insurance.** A contract whereby a person called the insurer agrees in consideration of money paid to him, called the premium, by another person, called the assured, to indemnify the latter against loss resulting to him on the happening of certain events. The policy is the document in which is contained the terms of the contract. Insurance is a contract uberrimae fidei (of the utmost good faith) and of indemnity only, except in the case of life and accident insurance, when an agreed sum is payable. (See the Insurance Companies Act, 1958.)
intention. The general rule of law is that person is presumed to intend the natural, reasonable and probable consequences of his acts, whether in fact he intended them or not.

In the criminal law there must be an intention to do some act before person can be guilty of crime; the intent and act must both concur to constitute a crime. A wrongful intention or guilty mind is not essential in every crime. The mental elements of crimes differ widely, and must be ascertained from the definitions of particular crimes. In most indictable offences, however; e.g., homicide and bigamy, a wrongful intention is necessary to constitute a crime. But in many acts prohibited by statute, especially those of an administrative character, there is imposed an absolute liability, and the absence of a wrongful intent is no excuse, e.g., breaches of laws and regulations dealing with the revenue, public health and order, etc. See MALICE; MENS REA.

inter alia. [Among others.]

inter arma leges silent. [Between armies the law is silent.] As between the State and its external enemies the laws are silent, and as regards subjects of the State, laws may be silenced by necessity in time of war or disturbance.

inter vivos. [During life: between living persons.]

interdicta. [Roman Law.] The Praetorium procedure by which the Praetor ordered or forbade something to be done, chiefly in disputes about possession or quasi-possession.

interest. A person is said to have an interest in a thing when he has rights, titles, advantages, duties, liabilities connected with it, whether present or future, ascertained or potential, provided they are not too remote.

Any direct interest in the subject-matter of legal proceedings disqualifies anyone from acting in a judicial capacity and will invalidate the proceedings if such person so acts, unless such interest is announced to or known by the parties and they waive the right
to object. Formerly, the parties to a case, their spouses, and persons with any pecuniary interest in a case, were incompetent witnesses. But now, in general, all persons are competent witnesses and considerations of interest merely affect the weight of their evidence. See HUSBAND AND WIFE.

Interest also signifies a sum payable in respect of the use of another sum of money, called the principal. A judgment debt bears interest at 4 per cent. from the date of the judgment (see Ord. 42, r. 16, note). In proceedings in any court of record for the recovery of debts or damages, the court has power to include in the sum for which judgment is given interest at such rate as it thinks fit on the debt or damages for the period between the date when the cause of action arose and the date of the judgment (Law Reform (Miscellaneous Provisions) Act, 1934, s. 3).

**interest reipublicae ne maleficia impunita.** [It is a matter of public concern that wrongdoings are not left unpunished.]

**interest reipublicae ne sua re quis male utatur.** [It concerns the State that no one should make a wrongful use of his property].

**interest reipublicae ut sit finis litium.** [It concerns the State that lawsuits be not protracted.]

**international law.** The sum of the rules accepted by civilised States as determining their conduct towards each other, and towards each other’s and towards each other’s subjects. It is law of imperfect obligation inasmuch as there is no sovereign superior to enforce it, but the United Nations set up tribunals to try enemy persons accused of offences against (inter alia) international law, committed during the Second World War.

In order to prove an alleged rule of international law it must be shown either to have received the express sanction of international agreement of it must have grown to be
part of international law by the frequent practical recognition of States in their dealings with each other. International law is only binding on the courts of this country is so far as it has been adopted and made part of municipal law. See PRIVATE INTERNATIONAL LAW.

**interpleader.** When a person is in possession of property in which he claims no interest, but to which two or more other persons lay claim, and he, not knowing to whom he may safely give it up, is sued or expects to be sued by one or both, he can compel them to interplead; i.e., to take proceedings between themselves to determine who is entitled to it (see Ord. 17). This is called “stakeholder interpleader.” Similarly, where any goods, etc., taken in execution by a sheriff are claimed by a third person, the sheriff may apply for interpleader relief.

**intimidation.** The misdemeanour of using violence or the threats to a person, his wife or children, to compel such person to do or abstain from doing any act which he has a legal right to do or abstain from doing. See the Conspiracy and Protection of Property Act, 1875.

The tort of intimidation consists in threatening another with breach of contract, etc.

**intra vires.** [Within the power of.] See ULTRA VIRES.

**ipso facto.** [By the mere fact.]

**irregularity.** The departure from, or neglect of, the proper formalities in a legal proceeding. They may be waived or consented to by the other party, or rectified by the Court on payment of costs occasioned.

**issue.** (1) The issue of a person consists of his children, grandchildren, and all other lineal descendants. At common law, a gift “to A and his issue” conferred a life estate only because of the failure to use the appropriate word “heirs.” The Wills Act, 1837, s. 29, provided that in a will the words “die without issue” are to be construed as
meaning a want or failure of issue in the lifetime, or at the death of, the party, and not an indefinite failure of issue, unless a contrary intention appears by the will. Since 1925, “issue” has been construed as a word of purchase (q.v.)

(2) Issues” is the technical name for the profits of land taken in execution under a writ of distraint (q.v.).

(3) When the parties to an action have answered one another’s pleadings in such a manner that they have arrived at some material point or matter affirmed on one side and denied on the other, the parties are said to be “at issue.”

(4) A “general issue” was a plea used where the defendant wished to deny all the allegations in the declaration or the principal fact on which it was founded; such was a plea of not guilty to an indictment.

\[\text{Joinder of Causes of Action}\]

Several causes of action may be joined in one action without leave, where (a) the plaintiff claims, and the defendant is alleged to be liable in the same capacity in respect of all the causes of action, or (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more causes of action, and in his personal capacity with reference to the same estate in respect of the others. In other cases leave of the court is required (Ord. 15, r. 1).

\[\text{Joinder of Parties}\]

All persons may be joined in one action as plaintiffs or defendants where the claim is in respect of the same transaction or series of transactions and common questions of law or fact arise (Ord. 15, r. 4).

\[\text{Joint Tortfeasors}\]

Persons are joint tortfeasors in cases of (1) vicarious liability; (2) agency; (3) common action; i.e., they must in fact or law, have committed the same wrongful act. Joint tortfeasors are jointly and severally responsible for the whole damage. At common law a judgment obtained against one
joint wroendoer released all the others, even if it was unsatisfied. This rule was abolished by the Law Reform (Married Women and Tortfeasors) Act, 1935, s. 6 (1)(a).

At common law one joint tortfeasor had no right of contribution or indemnity from another joint tortfeasor. This rule was abolished by the Law Reform (Married Women and tortfeasors) Act, 1935, s. 6 (1) (c), which provided that a tortfeasor may recover contribution from any other tortfeasor, who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise. In any proceedings for contribution the amount thereof must be determined according to the degree of the respective contributors’ responsibility for the damage (ibid., s. 6 (2)).

**judge.** An officer of the Crown who sits to administer justice according to law. The judges of the High Court are appointed from practising barristers, and hold office during good behaviour (see Judicature Act, 1925, ss. 9-17). They can be removed on address by both Houses of Parliament. Their salary is charged on the Consolidated Fund (Act of Settlement, 12 & 13 Will. 3, c. 2). A judge is not liable to an action for a judicial act or omission, except the refusal of a writ of habeas corpus in vacation (Habeas Corpus Act, 31 Car. 2, c. 2, s. 10).

**judgment.** The decision or sentence of a court in a legal proceeding. Also the reasoning of the judge which leads him to his decision, which may be reported and cited as an authority, if the matter is of importance, or can be treated as a precedent (q.v.).

As to the entry of judgment in proceedings, see Ords. 41 and 62.

**judgment creditor.** One in whose favour a judgment for a sum of money is given against a judgment debtor.
**judgment debtor.** One against whom judgment is given for a sum of money, and for which his property is liable to be taken in execution at the instance of the judgment creditor.

**Judicature Acts.** The Judicature Act, 1873, which took effect in 1875, amalgamated the then existing superior courts into the Supreme Court of Judicature (q.v.), consisting of the Court of Appeal and the High Court of Justice. It also provided for the fusion of law and equity, with the supremacy of equity in case of conflict (s. 25). The Judicature Acts were re-consolidated by the Supreme Court of Judicature (Consolidation) Act, 1925 (often refereed to as the Judicature Act, 1925).

**judici officium suum excedenti non paretur.** [Effect is not given to the decision of a judge delivered in excess of his jurisdiction.]

**judicia publica.** [Roman Law.] Public prosecutions: so called, because generally it was open to any citizen to institute them and carry them through.

**judicial notice.** The courts take cognisance or notice of matters which are so notorious or clearly established that formal evidence of their existence is unnecessary: and matters of common knowledge and everyday life; e.g., that there is a period of gestation of approximately nine months before the birth of a child.

**judicium Dei.** [The judgment of God.] Trial by ordeal.

**jura eodem modo destituuntur quo constituuntur.** [Laws are abrogated by the same means by which they were made.]

**jura publica anteverenda privatis.** [Public rights are to be preferred to private.]

**jura regalia.** [Sovereign rights.] Such rights were exercised under royal grant by the Lords Marchers (q.v.).

**juratores sunt judices facti.** [Juries are the judges of act.]
jurisdiction. (1) The power of a court or judge to entertain an action, petition or other proceeding. (2) The district or limits within which the judgments or orders of a court can be enforced or executed. The territorial jurisdiction of the High Court of Justice is over England and Wales.

In general, the court may take cognisance of acts committed or matters arising abroad, but in practice the defendant must be within the jurisdiction at the time the writ is served, except in cases where leave is given for service out of the jurisdiction (Ord. 11).

jurisprudence. The science or theory of law. The study of the principles of law. The philosophical aspect of the knowledge of law (Cicero). The knowledge of things human and divine, the science of the just and the unjust (Ulpian). Jurisprudence as a formal science was developed in England by Hobbes, Bentham and Austin. Sir Henry Maine fostered the study of the historical development of law and comparative jurisprudence, the purpose being “to aim at discovering the principles regulating the development of legal systems, with a view to explain the origin of institutions and to study the conditions of their life.” (Vinogradoff).

Jurisprudence is the scientific synthesis of the essential principles of law (C.K.Allen). See LAW.

jury. [Lat, jurare, to swear.] A body of sworn men summoned to decide questions of fact in a judicial proceeding. The jury in origin was a body of neighbours summoned by some public officer to give, upon oath, a true answer to some question (Maitland). The jury is the principal criterion of truth in the law of England (Blackstone). They originally testified to and decided issues of fact of their own knowledge. With the introduction of sworn witnesses the jury became exclusively the judges of fact.

The sworn inquest was apparently introduced by the Normans into England from the procedure of the Carolingian Kings of France. The inhabitants of a district were
summoned by a royal officer to testify and to declare or decide matters of fact relating to property and offences.

Henry II inaugurated the assize (q.v.) in lieu of trial by battle for deciding disputed questions of property rights. It was summoned to answer certain specific questions only. The jurata, or jury proper, replaced battle, the ordeal, and compurgation as a method of proof.

The mode of trial is normally fixed by the order on the summons for directions, or order giving leave to defend under Ord. 14. In the Queen’s Bench Division neither party has a right to a jury except in cases of fraud, libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage (Administration of Justice (Miscellaneous Provisions) Act, 1933; see Ord. 36, rr. 1-6) In other cases the action may be tried at the discretion of the judge with or without a jury. In the Chancery Division trial is without a jury.

There is a right to trial by jury in criminal matters where a sentence of imprisonment for a term exceeding three months could be given on summary conviction (Magistrates’ Courts Act, 1952, s. 25). See also SPECIAL JURY.

**jus.** [Roman Law.] It its widest sense includes moral as well as legal obligations. It means (1) “law” as opposed to lex (a statute); (2) a right; (3) relationship; (4) the court of a magistrate.

**jus canonicum.** [Canon Law.]

**jus civile.** [Roman Law.] (1) The law peculiar to a particular State; e.g., Rome. (2) The old law of Rome as opposed to the later jus praetorium.

**jus ex injuria non oritur.** [A right does not arise out of a wrong.]

**jus gentium.** [Roman Law.] The law of nations. The law common to all peoples. The rules of private law, recognised generally by different nations.
**jus honorarium.** [Roman Law.] Magisterial law; jus praetorium and jus aedilicum.

**jus in personam.** A right against a specific person.

**jus in rem.** A right against the world at large.

**jus naturale.** [Roman Law.] The law that nature has taught all living things (Justinian). The law supposed to be constituted by right reason, common to nature and to man; the principles deducible from the jus gentium.

**jus publicum privatorum pactis mutari non potest.** [Public law is not to be superseded by private agreements.]

**justice.** The upholding of rights, and the punishment of wrongs, by the law. See also JUSTITIA.

**justices.** The name given to the judges of the old common law courts, and now given to all judges of the High Court.

**justices of the peace.** Persons appointed by the Crown to be, or who are ex officio, justices within a certain district (e.g., a country or borough) for the conservation of the peace, and for the execution of other duties. They are said to act ministerially in cases of felony or misdemeanor, where they merely initiate the proceedings by issuing a warrant of apprehension, taking the depositions, and committing for trial. They act judicially in quarter sessions, and in all cases where they have summary jurisdiction, whether criminal or civil. The Justices of the Peace Act, 1949, amends the law relating to justices of the peace, including stipendiary magistrates, and justices’ clerks. See also Magistrates’ Courts Act, 1952.

**justification.** (1) The plea in defence of an action which admits the allegations of the plaintiff but pleads that they were justifiable or lawful. For example, in libel a plea of justification admits the publication of the defamatory words, but pleads that they are true in substance and in fact. (2) In procedure, bail or sureties for the defendant in an
action were said to justify when they satisfied the plaintiff or the court that they were sufficient.

**juvenile courts.** Special courts sitting apart from the ordinary criminal courts, and consisting of persons whose names are on a special panel for the purpose, for the trial of children and young persons under seventeen. It most exclude all persons except those directly concerned in the case, and press representatives. The parent or guardian of the child or young person charged must attend, who may be ordered to pay any fine and costs. The words “conviction” and “sentence” must not be used (Children and Young Persons Act, 1933, ss. 45 et seq.).

See Justices of the Peace Act, 1949, s.11; Magistrates’ Courts Act, 1952, s. 122, and as to appeals to quarter sessions, Criminal Justice Administration Act, 1962, s. 7, and Children and Young Persons Act, 1963, ss. 19,20.

The constitution and place of sitting of juvenile courts is provided for in s. 17, and Sched 2, Children and Young Persons Act, 1963.

**juvenile offenders.** (1) a child, i.e., under fourteen years; (2) a young person, i.e., over fourteen and under seventeen years. Charges against juvenile offenders which are dealt with summarily must be heard by a juvenile court (q.v.). See BORSTAL INSTITUTIONS; DETERNTION CENTRE; REMAND HOME.
K

K.C. King’s Counsel. See QUEEN’S COUNCEL.

King’s (Queen’s) Bench. See COURT OF KING’S BENCH.

knight. The lowest title of dignity. Originally a mali-at-arms. It is not here-ditary. Knights are of the following orders: Garter, Thistle, St. Patrick, Bath, St. Michael and St. George, Star of India, Indian Empire, Royal Victorian, British Empire, and lastly, Knights Bachelor.

An obsolete order is that of Knight Banneret, who, created by the King in the field, ranked after a baronet.

know-how. The putting together and applying in practice of the principles of some branch of engineering, technology or manufacturing technique, by one who has been initiated in it. It indicates the way in which a skilled man does his job (Stevenson Jordan and Harrison v. Macdonald and Evans [1952] 1 T.L.R. 101, C.A.). The sale of “know-how” by one concern to another involves initiating the purchaser into the way of working, or the carrying on of processes, by the seller. It includes the sale of information as to secret processes. Unless there is an outright sale to the purchaser, and the seller’s withdrawal from the business, and his agreement not to use the know-how to his prejudice of the purchaser, the proceeds of sale will be chargeable to income tax (Evans Medical Supplies, Ltd. v. Moriarty (1957) 37 T.C. 540; I.R.C.v. Rolls-Royce Ltd. [1962] 1 W.L.R. 425; English Electric Co. Ltd. v. Musker [1963] T.R. 13).
L

L.S. Locus sigilli (q.v.).

laches. Negligence or unreasonable delay in asserting or enforcing a right. The equitable doctrine that delay defeats equities, or that equity aids the vigilant and not the indolent. A court of equity has always refused its aid to stale demands, where a party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence; when these are wanting the court is passive and does nothing.

When an equitable right is analagous to a legal right which is subject to a period of limitation in bringing actions to enforce it, the court of equity may by analogy apply the same provision to the equitable right.

land. Comprehendeth any ground, soile, or earth whatsoever. It legally includeth also all castles, houses, and other buildings; also water (Coke). Land includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, or over, or derived from land; but not an undivided share in land (Law of Property Act, 1925, s. 205 (1) (ix).

land registration. The land Registry, London, was established by the Land Registry Act, 1862. The Land Transfer Act, 1875, provided for the voluntary registration of title to freeholds and leaseholds, and for the compulsory registration of writs, deeds, notices and charges relating to land.
Under the Land Transfer Act, 1897, the registration of title to land was made compulsory for the city and country of London.
In the Land Registration Act, 1925, as amended by the Land Registration Act, 1936, there are provisions for the extension of the compulsory area, and the law relating to land registration was amended and codified. Orders in Council have been made extending compulsory registration to a number of countries and county boroughs.

The Register is in three parts: (1) The property register, which describes and identifies the land and states the estate for which it is held; (2) the proprietorship register states whether the title is absolute, good leasehold, qualified or possessory; and indicates any restrictions on dealing with the land; (3) the charges register sets out mortgages, restrictive covenants and adverse notices. A land certificate is given to a registered proprietor.

Registers of deeds and wills relating to land have been kept in Middlesex, Yorkshire and the Bedford Level. The Bedford Level Registry was closed in 1920. The Middlesex Deeds Registry was closed in 1940 (Middlesex Deeds Act, 1940) Instruments which do not affect the legal estate need not be registered (Law of Property Act, 1925, s. 11). See LAND CHARGES.

**landlord and tenant.** The relation of landlord and tenant depends upon contract and is created by the landlord allowing the tenant to occupy the landlord’s house or land for a consideration termed rent, recoverable by distress. Exclusive possession of the premises must be granted, for a defined term. The contract is embodied in a lease (q.v.) or in a tenancy agreement, for short terms.

In the absence of express agreement, the landlord, the landlord impliedly contracts with the tenant to give him possession and guarantee him against eviction by any person having a title paramount to that of the landlord. The tenant impliedly contracts with the landlord to pay the rent, not to commit waste, and to give up possession at the end of the tenancy. Liability for repair is a matter of express stipulation or covenant. Under the Housing act, 1957, where houses are let at certain low rents there is an
implied condition that it is fit for human habitation and that the landlord will maintain it in this condition. Local authorities have extensive powers in regard to houses let to tenants.

The security of tenure of tenants under leases has been statutorily protected by the Rent Restriction Acts, the Landlord and Tenant Act, 1954, and in the case of agricultural tenancies. The Housing Act, 1961, defines repairing obligations of landlord and tenant under short leases. The Landlord and Tenant Act, 1962, requires the giving of information by landlords to tenants.

Lands Tribunal. The tribunal established by the Lands Tribunal Act, 1949 (in place of official arbitrators and others) to determine questions relating to compensation for the compulsory acquisition of land and other matters, including the discharge or modification of restrictive covenants under Law of Property Act, 1925, s. 84, and appeals from the local valuation courts. Appeal is by way of case stated to the Court of Appeal.

Lapse. As a general rule, when a person to whom property has been devised or bequeathed dies before the testator, the devise or bequest fails or lapses, and the property falls into residue, except that a lapsed share of residue does not fall into residue, but devolves as upon an intestacy. But if land is given to a person in tail who dies before the testator, leaving issue capable of taking under the entail, the land goes as if the devisee had died immediately after the testator (Wills Act, 1837, s. 32). And if the testator bequeaths (or devises) property to a child or other descendant of himself, and such descendant dies leaving issue who survive the testator, the legacy (or devise) does not lapse but takes effect as if the person to whom the gift was made had died immediately after the testator (ibid., s. 33). But this rule does not apply if land is devised to children as joint tenants, or to children as a class, or to children by reason of a special power of appointment.
Proceedings lapse in the event of the death of a defendant in criminal proceedings, or where no step is taken in an action within the appropriate time.

**larceny.** Theft. A person steals who without the consent of the owner fraudulently, and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent, at the time of such taking, permanently to deprive the owner thereof (Larceny Act, 1916, s. 1) “Takes” includes obtaining possession by any trick, intimidation, mistake on part of the owner, and by finding (q.v.). Grand larceny was distinguished from petty larceny where the value of the property exceeded twelve pence. Simple larceny is a felony punishable by five years’ imprisonment (ibid, s. 2). For an offence to constitute larceny it must involve taking possession from the person who has the actual or constructive possession, whether or not he is the owner. A thief cannot give a good title to a thing sold to another person. See FALSE PRETENCE.

**lata culpa dolo aequiparatur.** [Roman Law.] Gross negligence is equivalent to fraud.

**law.** A law is an obligatory rule of conduct. The commands of him or them that have coercive power (Hobbes). A law is a rule of conduct imposed and enforced by the Sovereign (Austin). But the law is the body of principles recognised and applied by the State in the administration of justice (Salmond). Blackstone, however, maintained that a rule of law made on a pre-existing custom exists as positive law apart from the legislator or judge, and Maine pointed out that there is law in primitive societies. Savigny regarded law as itself subject to evolution and as no arbitrary expression of the will of the law giver. Ihering found the end of law in the “delimitation of interests,” and Vinogradoff saw law as a set of rules imposed and enforced by a society with regard to the attribution and exercise of power over persons and things. De Montmorency regarded law ultimately as the rules, which bind men together in society in its struggle against natural environment: “Adaptation to environment is the condition of survival. Custom was the method by which man adapted himself to environment. To break custom was to face death. Coercion is, a weapon of law which
law has forged, but it is not the basis of law.” Anson disposed of he difficulties of Austin thus: “When the State has attained to regularity in definition and enforcement of rules of conduct, then we get the positive law with which Austin delighted to torment himself and his readers.” See CODE.

**law of nations.** International law or public international law.

**law report.** A published account of a legal proceeding, giving a statement of the facts, and the reasons the court gave for its judgment. The official Law Reports give an account of the arguments of counsel. There is a “headnote” or “Short points” to law reports for the convenience of users, but they may be misleading. Reports by barristers are cited in argument as precedents. Regular law reporting appears to have commenced in the thirteenth century with the Year Books (q.v.). In 1865 the Council of Law Reporting commenced a series of reports covering all the superior courts, known as the Law Reports. Reports in “The Times” and in professional journals may be cited if a case is not officially reported. The Stationery Office “Tax Cases” give revised shorthand reports of the judgments. The official Weekly Law Reports give promptly published reports of decided cases, some only of which will appear in the Law Reports. See APPENDIX: LAW REPORTS AND their ABBREVIATIONS.

The Judicial Proceedings (Regulation of Reports) Act, 1926, prohibits the publication of indecent matter by the Press in relation to judicial proceedings.

**lawful** in a statute is normally permissive, but may confer legal rights, the resistance to which, or the infringement of which by others would be wrongful.

**leading case.** A judicial decision or precedent (q.v.) settling the principles of a branch of law. For example, the case of Coggs v. Bernard is one of the most celebrated ever decided in Westminster Hall, since the elaborate judgment of Lord Holt contains the first well-ordered exposition of the English law of bailments.
**leading questions.** Questions which directly or indirectly or indirectly suggest to a witness the answer he is to give, or which put disputed matters to the witness in a form admitting of the answer “Yes” or “No.” The general rule is that leading questions are allowed in cross-examination, but not in examination-in-chief.

**League of Nations.** The society or association of States established by Part I of the Treaty of Peace between the Allied and Associated Powers, and Germany, signed at Versailles, June 28, 1919. The League has been superseded by the United Nations following the Second World War.

**lease.** A conveyance or grant of the possession of property to last during the life of a person, or for a term of years or other fixed period, and usually with the reservation of a rent. It is essential that a lease shall specify the period during which the lease is to endure, and the beginning and end of the term. The person who grants the lease is called the lessor, and the person to whom it is granted the lessee. A lease must be for a less estate or term than the lessor has in the property, for if it comprises his whole interest it is a conveyance or assignment and not a lease. Complete possession as against others must be granted. Where a person who is himself a lessee grants a lease of the same property to another person for a shorter term, it is called an underlease or sublease or a derivative lease. Leases might formerly be created verbally or in writing, or by deed, but by the Law of Property Act, 1925, ss. 51-55, for the purposes of creating a legal estate all leases are to be by deed, except leases taking effect in possession for a term not exceeding three years at the best rent obtainable without taking a fine (or premium), which may be made verbally or in writing. A lease void because not made by deed may be enforceable in equity under the doctrine of part performance (Walsh v. Lonsdale (1882) 21 Ch. D. 9). Leases come to an end by expiry, notice, forfeiture, surrender, merger, or by becoming a satisfied term, by being enlarged into a fee simple or by disclaimer. See ESTATE, FORFEITURE; LEASEHOLDS; REVERSION; TERM OF YEARS.
lease and release. A mode of conveying freehold land which was in common use from 1536 to 1841. It was used to evade the Statute of Enrolments (27 Hen. 8, c. 16). passed to prevent land from being conveyed secretly by bargain and sales of estates of inheritance or freehold to be enrolled, and therefore it soon became, the practice on a sale of land for the vendor to execute a lease to the purchaser for a year by way of bargain and sale, which under the Statute of Uses (27 Hen. 8, c. 10) gave him seisin of the land without entry or enrolment, and ten the vendor released his reversion to the purchaser by a deed known as a release, thus vesting in him the fee simple in possession without entry or livery of seisin. The lease and the release were executed on the same day, the release being dated for the following day and being executed after the lease. The consideration for the lease was a nominal sum of five or ten shillings, which was never paid, the real consideration being stated in release. In 1841 the statute 4 Vice. c. 21 made a release effectual without the preliminary lease for a year, and in 1845the Real Property Amendment Act, 1845, made a deed of grant sufficient for the conveyance of all corporeal hereditaments. Conveyance by bargain and sale was finally abolished by the Law of Property Act, 1925, s. 51(1).

lease by estoppel. If a person makes a lease of land in which he has no interest, and he afterwards acquires the land, he is estopped or precluded from denying the existence of the lease.

leaseholds. Lands held under a lease for years. They are personal estate, being Chattels real. Leaseholds are transferable by assignment and the assignee is liable to the lessor on the covenants in the lease which run with the land so long as he holds under the lease. But the original lessee remains liable to the lessor on the covenants, notwithstanding any assignment, and is entitled to be indemnified by the assignee. It a conveyance of leaseholds for valuable consideration by a beneficial owner, a covenant as to the validity of the lease is implied. Since 1925 a mortgage of leaseholds can only be by sub-demise of a term shorter by one day than the term of the lessee, or by a deed of charge by way of legal mortgage (Law of Property Act, 1925, s. 86). Leaseholds, on the death of the lessee, vest in his personal representatives.
When there is a residue unexpired of not less than two hundred years of a term originally created for at least three hundred years, unaffected by trust or right of redemption in favour of a reversioner, and subject to no rent of money value, the term may be enlarged into a fee simple by deed; provided it is not liable to be determined by re-entry for condition broken, and is not a sub-demise out of a superior term itself incapable of enlargement (Law of Property Act, 1925, s. 153).

Under a contract to grant or assign a term of intended lessee or assign has no right to call for the title to the freehold or leasehold reversion, as the case may be (ibid., s. 44). See LANDLORD AND TENANT.

leave and licence. Permission. In an action for trespass it is a good defence to plead that the act complained of was done with the “leave and licence,” i.e., the permission, of the plaintiff.

legacy. A gift of personal property by will. The person to whom the property is given is called the legatee, and the gift or property is called a bequest. The legatee’s title to the legacy is not complete until the executor has assented to it. (1) A specific legacy is a bequest of a specific part of the testator’s personal estate; (2) A demonstrative legacy is a gift of a certain sum directed to be paid out of a specific fund; (3) A general legacy is one payable only out of the general assets of the testator. See ABATEMENT OF LEGACIES.

legal aid. The Legal Aid and Advice Act, 1949 provides for assistance being given to persons of moderate disposable income (not exceeding £700 a year under the Legal Aid Act, 1960) and disposable capital (£500 in 1960), in regard to legal proceedings in practically all courts from the House of Lords down to certain inferior courts, including criminal courts, and domestic proceedings before justices, and also for legal aid and advice in non-litigious matters. There are excluded, however, from the Legal Aid Scheme, proceedings in defamation, breach of promise, seduction, enticement of
spouses, relator actions and election petitions. There are panels of solicitors and counsel willing to act, and to forgo 10 per cent of their proper remuneration.

The Legal Aid Scheme is administered by the Law Society under the Lord Chancellor, in consultation with the General Council of the Bar. An applicant for relief must satisfy the local Legal Aid Committee that he has reasonable grounds for taking or defending proceedings, and he is subject to a means test conducted by the National Assistance Board. Legal aid is available to anyone to whom a certificate is issued under the Legal Aid (General) Regulations, 1926. In granting a certificate the Local Aid Committee fix the sum (if any) to be paid to the Legal Aid Fund as the contribution of the person assisted. The Legal Aid (General) Regulations, 1962, provide for the practical working of the scheme.

The costs incurred by successful opponents of legally aided litigants may be met out of the legal aid fund (Legal Aid Act, 1964).

**legitimacy.** The condition of being born in lawful wedlock. Every child born of a married woman during the subsistence of the marriage is presumed to be legitimate but this presumption may be rebutted. By the Legitimacy Act, 1926, where the parents of an illegitimate person marry or have married one another, if the father was at the date of the marriage domiciled in England or Wales, it renders that person, if living, legitimate from the commencement of the Act, or from the date of the marriage, whichever last happens, unless the father or mother was married to a their person when the illegitimate child was born. By the Legitimacy Act, 1959, s. 1, however, the provisions of the 1926 Act were extended to cases where either or both of the parents were married when the child was born.

A legitimated person is, after his legitimation, in the same position as if he had been legitimate when born. In regard to property, however, a legitimated person, his spouse or issue may only claim if their title is subsequent to the date of legitimation. An
illegitimate child and the mother are entitled to succeed to each other’s property on intestacy.

Where a decree of nullity is granted in respect of a voidable marriage, the legitimacy of a child is not affected by the annulment of the marriage of its parents (Matrimonial Causes Act, 1950, s. 9). The child of a void marriage is treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth, or at the time of the celebration of the marriage, if later, both or either of the parties reasonably believed that the marriage was valid (Legitimacy Act, 1959, s. 2).

Under the Matrimonial Causes Act, 1950, s. 17, any person who is a British subject or whose right to be deemed a British subject depends wholly or in part on his legitimacy or on the validity of any marriage may apply to the Probate, Divorce and Admiralty Division for a declaration that he is legitimate, or that his parents or grandparents were validly married, or that he himself is validly married. A judgment made on such a petition is in rem, that is binding on all the world.

**Lesbianism.** Unnatural sexual practices between women. An imputation of Lesbianism is an imputation of unchastity within the Slander of Women Act, 1891 (Kerr v. Kennedy [1942] 1 K.B. 409). It may amount to cruelty to a husband if his health suffers thereby (Spicer v. Spicer [1954] 1 W.L.R. 1051).

**letter of credit.** An authority by one person to another to draw cheques or bill of exchange (with or without a limit as to amount) upon him, with an undertaking to honour the drafts on presentation. An ordinary letter of credit contains the name of the person by whom the drafts are to be negotiated or cashed: when it does not do so, it is called an open letter of credit.

**letters of marque (or mart).** Extraordinary commissions issued, either in time of war or peace, by the Lords of the Admiralty, or the vice-admirals of a distant province, to the commanders of merchant ships, authorising reprisals for reparation of the damages
sustained by them through enemies at sea. They were either,” to make reparation to individuals, or “general,” when issued by the government of one State against all the subjects of another. Letters of countermarque were issued as a reprisal for the issue of letters of marque.

**letters patent.** Grants by the Crown of lands, franchises, offices etc., contained in charges or instruments not sealed up but exposed to open view with the Great Seal pendent at the bottom, and usually addressed to all the subjects of the realm. See PATENT.

**levy.** to raise money compulsorily, e.g., by means of a distress, or by taxed.

**lex domicilii.** The law of the place of a person’s domicile (q.v.).

**lex fori.** The law of the forum or court in which a case is tried. More particularly the law relating to procedure or the formalities in force (adjective law) in a given place.

**lex loci solutionis.** [The law of the place of performance.]

**lex non scripta.** [The unwritten law.] The common law.

**Lex Regia.** [Roman Law.] The statute by which the people vested the supreme power in the emperor.

**lex situs.** [The law of the place where property is situated.] The general rule is that lands and other immovables are governed by the lex situs.

**lex spectal naturae ordinem.** [The law has regard to the order of nature.]

**liability.** Subjection to a legal obligation; or the obligation itself. He who commits a wrong or breaks a contract or trust is said to be liable or responsible for it. Liability is civil or criminal according to whether it is enforced by the civil or criminal courts. A contingent liability is a future unascertained obligation.

**libel.** Defamation (q.v.) by means of writing, print, or some permanent form. The publication of false defamatory words, etc., is a tort actionable without proof of special damage. It is a defence to an action for libel (1) that there was no publication; (2) that the words used were incapable of a defamatory meaning; (3) that the words
used were true in substance and in fact (justification); (4) that the publication was privileged. Privilege may be absolute or qualified, and qualified privilege may be lost by proof of express or actual malice (q.v.).

The Defamation Act 1952, s. 4, provides for an offer of amends to be made in cases of unintentional defamation, which will operate to determine the proceedings if accepted, and if not accepted, as a defence. Section 7 deals with qualified privilege of newspapers.

Libel, but not slander, is also a crime (misdemeanour), the essence of which is the danger to the public peace, so it is only necessary to prove publication to the prosecutor; publication to a third person is unnecessary. To be libellous, the matter must be calculated to provoke a breach of the peace by casting upon the prosecutor an injurious imputation. Defences: (1) publication on a privileged occasion; (2) the matter was fair comment on a matter of public interest; (3) publication was accidental, or without authority or knowledge; (4) justification; i.e., the libel was true and its publication for the public benefit.

A public libel is one which tends to produce evil consequences to society, because it is blasphemous, obscene, or seditious. The publication of such a libel is a misdemeanour.

In an action for libel, sufficient particulars of the publications complained of must be given to enable them to be identified (Ord. 82).

**liberty.** An authority to do something which would otherwise be wrongful or illegal. Formerly used in the sense of franchise (q.v.) denoting both a right or rights, and the place where they are exercisable.

**licence.** An authority to do something which would otherwise be inoperative, wrongful, or illegal; e.g., to enter on land which would otherwise be a trespass. A
licence passes no interest, and a mere licence is always revocable. A licence coupled
with an interest which is in the nature of a grant; e.g., of sporting rights, is irrevocable
until the benefit granted has been enjoyed or reserved. A contractual licence, whether
or not coupled with an interest, may be irrevocable, depending on the construction of
the terms of the contract between the parties. If the time of enjoyment is not limited,
the giving of reasonable notice of revocation will be necessary. See BARE
LICENSEE.

**licensee.** One to whom a licence (q.v.) is given.

**lie.** An action “lies” if, on the facts of the case, it is competent in law, and can
properly be instituted or maintained.

**lien.** The right to hold the property of another as security for the performance of an
obligation. A common law lien lasts only so long as possession is retained, but while
it lasts can be asserted against the whole world. An equitable lien exists independently
of possession; i.e., it may bind property not in possession at the time the obligation is
incurred, but it cannot avail against the purchaser of a legal estate for value without
notice of the lien.

A possessory lien is the right of the creditor to retain possession of his debtor’s
property until his debt has been satisfied. A particular lien exists only as a security for
the particular debt incurred, while a general lien is available as a security for all debts
arising out of similar transactions between the parties. Thus a solicitor has a lien on
his client’s papers to secure his costs.

A charging lien is the right to charge property in another’s possession with the
payment of a debt or the performance of a duty. A maritime lien is a lien on a ship or
freight, either possessory, arising out of contracts of carriage, or charging, arising out
of collision or other damage. A vendor’s lien is the right of a seller to retain his
property till payment of the purchase price.
**lieu, in.** In the place of.

**life, expectation of.** A person who is injured by another’s negligence may recover, as an independent head of damage, compensation for the loss of his normal expectation of life (Flint v. Lovell [1935] 1 K.B. 354); equally so may the representatives of a person who has been killed (Rose v. Ford [1937] 3 All E.R. 359). But the thing to be valued is not the prospect of length of days but the prospect of a predominantly happy life, and the degree of happiness to be attained by a human being does not depend on wealth or status (Benham v. Gambling [1941] A.C. 157).

**life, presumption of.** Once the fact of life on a given date has been established, the law will presume its continuance unless there be evidence, or a presumption of fact recognized by the law, to the contrary effect.

**limitation.** To limit an estate is to mark out the extreme period during which it is to continue, and the clause by which this is done in a conveyance is called a limitation. See WORDS OF LIMITATION.

**liquidator.** A person appointed to carry out the winding up of a company. The duties of a liquidator are to get in and realize the property of the company, to pay its debts, and to distribute the surplus (if any) among the members. The chief difference between a liquidator in a winding up by the court and a liquidator appointed in a voluntary winding up is that the former cannot as a rule take any important step in the winding up without the sanction of the court. In the Companies Act, 1948, ss. 237-251 deal with liquidations in a winding up by the court, and s. 303 in a voluntary winding up. The court may appoint and remove a liquidator in a voluntary winding up (s. 304).

**lis alibi pendens.** [A suit pending elsewhere.] Actions may be stayed on this ground.
**litigation.** The parties before the court are wholly answerable for the conduct of their own cases. Litigation is a game in which the court is umpire (Pollock).

**local authority.** A body charged with the administration of local government (q.v.); the council of a country, county borough, country district or rural parish (Local Government Act, 1933, s. 305). “County district” is defined as a non-county borough, urban district or rural district. Meetings are open to the public (Public Bodies (Admission to Meetings) Act, 1960)/

It is a body having power to levy a rate within the Local Loans Act, 1875.

**locus in quo.** [The place in which.]

**locus sigilli.** [The place of the seal.]

**locus standi.** [A place of standing.] The right to be heard in court or other proceeding.

**lord.** (1) A person of whom land is held by another as his tenant. The relation between the lord and the tenant is called tenure, and the right or interest which the lord has in the services of this tenant is called a lordship or seignory. (2) A peer of the realm.

**lottery.** A distribution of prizes by lot or chance without the use of skill. By the Betting, Gaming and Lotteries Act, 1963, all lotteries are declared unlawful (s. 41). except where otherwise provided in the Act, (ss. 38, 48, 49, 50). Small lotteries incidental to certain entertainments (s. 43), private lotteries (s. 44), and certain small lotteries conducted for charitable, sporting or other purposes (s. 45) are exempted. Sched. 7 provides for the registration of societies promoting small lotteries under s. 45. There is a saving for lotteries of art unions (s. 46). Restrictions are imposed on the conduct in or through a newspaper, or in connection with a trade or business, or the sale of any article to the public, of certain competitions (s. 47).

**lunatic.** A lunatic was defined by the Lunacy Act, 1890, s. 341, as an idiot or person of unsound mind. It denoted a person who has attacks of intermittent insanity
separated by lucid intervals, or suffers from delusions; or who from unsoundness of
mind is incapable of managing himself or his affairs, and has been found so by
inquisition; or was detained in an asylum on account of unsoundness of mind. The
terms “lunatic” or “person of unsound mind,” however, are now replaced by “patient,”
in accordance with the Mental Health Act, 1959.

In legal proceedings a patient can only sue by his “next friend.” or defend by his
guardian ad litem, who must act by a solicitor (Ord. 80). See COURT OF
PROTECTION.
M.R. Master of the Rolls (q.v.).

Magistrate. A judicial officer having a summary jurisdiction in matters of a criminal nature; a justice of the peace. Stipendiary magistrates are appointed to act in certain populous places with wider powers than ordinary justices, and receive a salary. See JUSTICES OF THE PEACE.

Magna Carta. The charter originally granted by King John, and afterwards re-enacted and confirmed by Parliament more than thirty times. The charter now in force is the statute 9 Hen. 3, with which our statute book commences.

It contained provisions to protect the subject from abuse of the Royal Prerogative in the matter of arbitrary arrest and imprisonment, and from amercements purveyance and other extortions (see McKechnic, Magna Carta).

Magnum Concilium. The Great Council (q.v.)

Madiden assize, etc. One at which there is no prisoner for trial.

Maintenance. (1) The supply of the necessaries of life for a person. A maintenance clause in a deed of settlement is the provision of income for such a purpose.

In divorce proceedings on order for maintenance may be made until after the decree nisi has been pronounced, or take effect until the decree has been made absolute. An order for maintenance may be secured to the wife for her life, or be unsecured in the form of an order directing the husband to pay to the wife for their joint lives a reasonable weekly or monthly sum (Matrimonial Causes Act, 1950, ss. 19-29).
Orders for the maintenance of married women and children are made in courts of summary jurisdiction under the Matrimonial Proceedings (magistrates’ Courts) Act, 1960. Application for orders under that Act may be made by either spouse on the following grounds: (1) desertion; (2) persistent cruelty; (3) assaults and sexual offences; (4) adultery; (5) venereal disease; (6) habitual drunkenness or addiction to drugs. The wife alone may apply on the grounds of her being compulsorily submitted to prostitution, or the wilful neglect to provide her with reasonable maintenance. A husband whose income is reduced by old age, illness or accident, and whose wife has an income of her own, but refuses to help with the maintenance of the family, can also apply (ibid., s. 1 (1); see also Ord. 42, r. 28 n.).

(2) Maintenance “signifieth in law a taking in hand, bearing up or upholding of quarrels and sides, to the disturbance or hindrance of common right” (Coke). It is the tort committed by a person who, having no interest in civil proceedings, and with no lawful justification, assists one of the parties, with money or otherwise, to institute, prosecute or defend the action. The tort is actionable at the suit of the other party. The essence of the offence intermeddling with litigation in which the intermeddler has no concern. It is a sufficient justification that the defendant was actuated solely by charitable motives, but it is no defence that the maintained proceedings were successful. The wrong of maintenance is not actionable per se, but only on proof of special damage.

Maintenance includes champerty and embracery (q.v.). Contracts cannot be enforced which infringe the law as to maintenance. See MALICIOUS PROSECUTION.

mala fides. [Bad faith.] See BONA FIDE.

malfeasance. The doing of an unlawful act; e.g., a trespass.

malice. Ill-will or evil motive: personal spite or ill-will is sometimes called actual malice, express malice, or malice in fact. In law an act is malicious if done intentionally without just cause or excess. Malice in the law of tort is a constituent of

**malicious falsehood.** The wrong consisting in the making of false statements to others concerning the plaintiff whereby he suffers loss through their actions. An action will lie for written or oral falsehoods not actionable per se or even defamatory, where they are maliciously published, and calculated in the ordinary course of things to produce, and where they do produce actual damage: e.g., a false statement that a man has ceased to carry on business (Ratcliffe v. Evans [1892] 2 Q.B. 524). It includes slander of title (q.v.). Proof of special damage is not necessary if publication is in writing or other permanent form (Defamation Act, 1952, s. 3).

**malicious prosecution.** The tort consisting of the institution of criminal or bankruptcy proceedings against another (or liquidation proceedings against a company) or to procure the arrest and imprisonment of another by means of judicial process, civil or criminal, or to cause execution to issue against the property of a judgment debtor, maliciously and without reasonable and probable cause, by which that other suffers damage to his fame, person or property, provided that the proceedings terminate in the other’s favour, so far as that may be possible.

**mandamus.** [We command.] (1) A high prerogative writ which issued in the King’s name from the High Court of Justice on application to the King’s Bench Division, to some person or body to compel the performance of a public duty, where no other effective means of redress was available. It has been replaced by an order of mandamus. The procedure is that an application for leave to apply for an order is made ex parte to a Divisional Court of the Queen’s Bench Division. If leave is given to apply for an order, the application is made by notice of motion to the Divisional Court, which must be served on all parties affected (see Ord. 59).

(2) An action of mandamus lies to command the defendant to fulfill any duty in which the plaintiff is personally interested. It was created by the Common Law Procedure
Act, 1854, s. 68, as being an additional common law remedy in the nature of specific performance (see Ord. 53).

**mandate.** (1) A direction, request, or authoritative command. Thus a cheque is a mandate by the drawer to his banker to pay the amount to the transferee or holder of the cheque. (2) The authority which was conferred on “advanced nations by the Covenant of the League of Nations, Art. 22, to administer, as Mandatories on behalf of the League, former enemy colonies and territories which were inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, applying the principle that the well-being and development of such peoples formed a sacred trust of civilization. See TRUST TERRITORIES.

**manslaughter.** The crime of unlawful homicide; (a) where death is caused accidentally by an unlawful act; or where death is caused by culpable negligence, as by furious driving; (b) where death is caused by an act done in the heat of passion, caused by provocation (q.v.). manslaughter is a felony, punishable by imprisonment for life, or a fine (Offences against the Person Act, 1861, s. 5). Upon an indictment for murder the jury, if they find that malice aforethought has not been proved, can bring in a verdict of manslaughter. See DIMINISHED RESPONSIBILITY.

**marriage.** Marriage is essentially the voluntary union for life of one man and one woman to the exclusion of all others, subject to the rules as to consanguinity or affinity and capacity to perform the duties of matrimony prevailing in the place of domicile of the parties, and subject to the formalities required either by the law of England or the place where the marriage takes place. But a potentially polygamous marriage, if valid by the law of the parties’ domicile (e.g., a Hindu marriage in India), is valid in English law.

An agreement to marry is a contract, and failure to complement it by one party gives a right of action for breach of promise to the other: Corroboration of the promise is
necessary. Marriage means (a) the act of marrying in the ceremony of marriage, and (b) the status of marriage or being married.

Under the canon law, adopted by the common law, marriage could be by (1) a public celebration of the marriage service in a church, known as a celebration in facie ecclesiae; (2) by a clandestine celebration anywhere conducted by one in priest’s orders. The statute 26 Geo. 2, c. 33 (Lord Hardwicke’s Act), provided that any marriage celebrated after 1754 without publication of banns or licence duly granted or celebrated elsewhere than in the parish church or public chapel should be null and void in the absence of a special licence from the Archbishop of Canterbury.

The Marriage Act, 1949, is a consolidating Act and provided, principally, that marriages within the scheduled prohibited degrees should be void (s. 1); marriages of persons under sixteen are void (s. 2); marriages of persons under twenty one may be subject to consents (s. 3); a marriage may be solemnised between the hours of eight in the forenoon and six in the afternoon (s. 4); and a marriage according to the rites of the Church of England may be solemnised (a) after the publication of banns of matrimony; (b) on the authority of a special licence of marriage granted by the Archbishop of Canterbury; (c) on the authority of a licence of marriage granted by a competent ecclesiastical authority (a “common licence”), or on the authority of a certificate issued by a superintendent registrar. See REGISTRATION OF MARRIAGE.

The Act of 1949 was amended by the Marriage Act, 1949 (Amendment) Act, 1954, and the Marriage Acts (Amendment) Act, 1958. The Marriage (Enabling) Act, 1960, enables a valid marriage to be contracted between a man and a woman who is the sister, aunt, or niece of a former wife of his (whether living or not) or was formerly the wife of his brother, uncle, or nephew (Whether living or not).

A void marriage is one where the parties went through a marriage ceremony, but there was lacking some necessary ingredient of a valid marriage: it is void ad initio, and is
regarded as never having taken place. A voidable marriage is a valid subsisting marriage until a decree of nullity is pronounced as, e.g., for failure to consummate the marriage.

“Marriage” was formerly also the right of a guardian by tenure to bestow his ward in marriage.

marshalling. (1) As between creditors. Where there are two creditors of the same debtor, and one creditor has a right to resort to two funds of the debtor for payment of his debt, and the other creditor has the right to resort only to one fund, the court will order the first creditor to be paid out of the fund against which the second creditor has no claim, so far as that fund will extend, so as to leave as much as possible of the second fund for payment of the second creditor, If the first creditor has already paid himself out of the second fund, the court will allow the second creditor to stand in his shoes and resort to the first fund to the extent to which the second fund has been exhausted by the first creditor.

(2) As between beneficiaries. If any beneficiary is disappointed of his benefit under the will through a creditor being paid out of the property intended for that beneficiary, he may recoup himself by going against any property which ought to have been used to pay debts before his property was resorted to.

(3) As between legatees, where certain legacies are charged on real estate and others not, a case for marshalling arises where the realty is specifically devised.

master and servant. The relation of master and servant exists when the master has the right at the moment to control the manner in which the servant shall act; e.g., a clerk is a servant: an opera singer is not. A master is liable for the act or default of his servant committed in the course of and within the scope of his employment on the ground of implied authority. If the master himself has no authority to do an act, then the servant can have no implied authority. A servant has implied authority to do all things necessary to protect his master’s property entrusted to his care, but not to arrest
a person upon suspicion of an attempt to steal in order to punish the supposed offender.

At common law a master was not criminally liable for the acts of his servants unless he had authorized them, or aided and abetted them, but by particular statutes the master may be responsible for acts of his servant even unauthorized or forbidden, if they are committed within the general scope of his employment.

An independent contractor is not a servant, and the employer is not liable for default, except where (1) the work is unlawful; (2) it must be done in a certain way by statute and the contractor fails to do it in that way: (3) the work is likely to cause injury, when the employer is bound to see that necessary precautions are taken. The employer may be liable if he is in some breach of duty himself as where he employs an incompetent contractor. He cannot rid himself of his own responsibilities by hiring another to carry out the work involved.

A master has an action in tort for damages against one who seduces his servant whereby he loses her services, Similarly, the master may sue one who entices away, imprisons or causes bodily harm to his servant, whereby the master loses his services. Further, it is a tort for one to induce or procure a breach of contract of service, whereby damage results to the employer.

The Contracts of Employment Act, 1963, provides that employers shall normally provide written particulars of the main terms of employment, and the minimum periods of notice required, to persons who have been continuously employed for 26 weeks or more. The minimum periods of notice are from one week to four weeks according to service of the employees. An employee can be dismissed without notice in case of misconduct. He can accept payment in lieu of notice. Provision is made for payment of remuneration during a period of notice and for assessing damages if the employer fails to give due notice. See EMPLOYER’S LIABILITY; SEDUCTION.
mayhem. Violently depriving another of the use of a member proper for his defence in fight, such as an arm, a leg, an eye, etc. It was both a civil injury and a criminal offence.

me judice. [In my opinion.]

memorandum. A note of the particulars of any transaction or matter. A clause inserted in a policy of marine insurance to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature and for minor damages. It begins as follows: “N.B. – Corn, fish, salt, fruit, flour and seed are warranted free from average, unless general or the ship be stranded.” See also ASSOCIATION, MEMORANDUM OF.

menaces. Threats of injury to persons or property, including third persons, to induce the person menaced to part with money or valuable property; e.g., threats to accuse of immorality or misconduct. Demanding money or property with menaces is a felony under the Larceny Act, 1916, ss. 29, 30, but not if there is reasonable cause; as, e.g., the promotion of legitimate business interests of the person making the demand, without intent to injure the other party, the sum demanded not being extortionate or excessive (Thorne v. Motor Trade Association [1937] A.C. 797). See THREATS.

demands rea. [Guilty mind.] An evil intention, or a knowledge of the wrongfulness of an act. There is a presumption that it is an essential ingredient in every criminal offence, liable to be displaced either by the words of the statute, or by the subject-matter with which it deals. Many minor statutory offences, however, are punishable irrespective of the existence of mens rea; the mere intent to do the act forbidden by the statute is sufficient mens rea. If a particular intent or state of mind is an ingredient of a specific offence, that must be proved by the prosecution; but the absence of mens rea generally is a matter of defence. See INTENTION; MALICE.
mental disorder. Mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind. “Psychopathic disorder” is divided into severe subnormality, and psychopathic disorder. “Severe subnormality” means a state of arrested or incomplete development of mind, which includes subnormality of intelligence, and which renders the patient incapable of living an independent life or of guarding himself against serious exploitation. “Subnormality” means a state of arrested or incomplete development of mind, which includes subnormality of intelligence, but which requires or is susceptible to medical or special treatment or training. “Psychopathic disorder” means a persistent disorder or disability of mind, whether or not including subnormality of intelligence, which results in abnormally aggressive or seriously irresponsible conduct which requires or is susceptible to medical treatment (Mental Health Act, 1959, s. 4).

mercantile law. The branch of English law which as succeeded to the Law Merchant.” It comprises usually partnership, companies, agency, bills of exchange, carriers, carriage by sea, insurance, sale, bottomry and respondentia, debt, guaranty, stoppage in transit, lien and bankruptcy.

merger. That operation of law which extinguishes a right by reason of its coinciding with another and greater right in the same person; e.g., a life estate is merged in or swallowed by the reversion when the two interests come into the hands of the same person; e.g., a life estate is merged in or swallowed by the reversion when the two interests come into the hands of the same person. A right of action on a simple contract debt is merged is the right of suing on a bond for the same debt, and a right of action is merged in a judgment in the sense that no further action may be brought on the debt, but only on the judgment. A special characteristic of the debt, however, such as being a preferential claim in bankruptcy, is not lost merely because judgment is obtained in respect of the debt.

In equity, merger is a question of intention. If the benefit of a charge on property, and the property subject to the charge, vest in the same person, then equity will treat the
charge as kept alive or merged according to whether it be of advantage or not to the person entitled. The Law of Property Act, 1925, s. 185, provided that there is no merger at law if there would have been none in equity.

**merits.** The real matters in question as opposed to technicalities. An affidavit of merits is an affidavit showing that a defendant has a substantial ground of defence to an action.

**mesne.** Middle, intervening or intermediate. See PROCESS. A mesne lord was one who held of a superior lord.

**mesne profits.** The profits lost to the owner of land by reason of his having been wrongfully dispossessed of his land. A claim for mesne profits is usually joined with the action of ejectment.

**military law.** The law under which courts-martial sit, and to which persons in the military service of the Crown are subject.

**militia.** The force which was raised after the Restoration of 1660 as a substitute for those which had been raised under the commissions of array and lieutenancy, was superseded by the Territorial Forces after 1907. The Militia, now entitled the Supplementary Reserve, is a body of reservists who have not served in the regular forces.

**mind.** The state of a man’s mind is as much a fact as the state of his digestion (per Bowen L.J., Edgington v. Fitzmaurice (1885) 29 Ch. D., at p. 483). A false representation of intention or opinion is actionable as a tort (deceit). No damages are recoverable for mere mental suffering, unaccompanied by physical harm. See MENS REA.

**minister.** A “Servant of the King”; a member of the Cabinet, or a holder of high office under the Crown who vacates it on a change of Government. Every act of the Crown
must be done through Ministers, who can be personally sued in law for their own acts. The constitutional doctrine of ministerial responsibility is that every member of the Cabinet who does not resign is absolutely responsible for all that is done at Cabinet meetings; that is, ministers are collectively responsible to Parliament. But the individual minister is responsible for all the acts of his own Department.

It was enacted by the Ministers of the Crown Act, 1937, that while ministerial office as such should be no bar to membership of the House of Commons, there should be a maximum number of ministers in that House. The Ministers of the Crown (Transfer of Functions) Act, 1946, provided for the transfer by Order in Council of the functions of one minister to another, and for the dissolution of a government Department. (See also the Ministers of the Crown (Parliamentary Secretaries) Act, 1960.

**minor.** A person under the age of twenty-one years. In practice it is used in respect of a child over seven years old. See INFANT.

In Roman Law, the age of minority extended from puberty (twelve of fourteen) up to twenty-five years.

**minutes.** (1) Notes or records of business transacted at a meeting. (2) Copies of a draft order or decree before being embodied in a formal judgment of the court.

**miscarriage.** It its legal sense means a failure of justice.

**misdemeanour.** Any crime or indictable offence not amounting to felony, such as perjury, battery, libel, conspiracy, and public nuisances. At common law, misdemeanours were generally punishable by fine and imprisonment, They were the lesser crimes or offences and were formerly known as transgressions or trespasses. The person on trial for misdemeanour is called the “defendant,” instead of the “prisoner” as in felony.

**misfeasance.** Misfeasance is the improper performance of a lawful act; e.g., where there is negligence or trespass. A misfeasor is a person who is guilty of a misfeasance.
misjoinder. Where persons are wrongly joined as plaintiffs or defendants in an action, i.e., where persons are made parties who ought not to be. No action can now be defeated by a misjoinder or non-joinder of parties, and the court may of its own motion, or on application, order a party to cease to be a party (Ord. 15, r.6).

misnomer. A mis-naming. An amendment in consequence can be made in either civil or criminal causes.

misrepresentation. A statement, or conduct, which conveys a false or wrong impression. A false or fraudulent misrepresentation is one made with knowledge of its falsehood, and intended to deceive. A negligent misrepresentation is one made with no reasonable grounds for believing it to be true. An innocent misrepresentation is one made with reasonable grounds for believing it to be true, as where an honest mistake is made. A fraudulent misrepresentation is actionable as a tort.

When a person has been induced to enter into a contract by misrepresentation, he may in general either (1) affirm the contract and insist on the misrepresentation being made good, if that is possible; or (2) rescind the contract if it is still executory, and if all parties can be restored to their original positions; or (3) bring an action for damages; or (4) rely upon the misrepresentation as a defence to an action on the contract.

An innocent misrepresentation has no effect on the contract unless it produces mistake excluding true consent, or unless it amounts to a warranty or condition, or unless the contract is one in which good faith is especially required, such as contracts of insurance and family settlements. Specific performance will not be decreed if a definite untrue representation has been relied on. See FRAUD.

mistake. A mistake in a written document may, in a proper case, be rectified by the court. A mistake as to the provisions of English law is, in general, immaterial: everyone is presumed to know the law. A mistake of fact is in a better position. Thus
if a person signs a document believing it to be of another sort, he may plead non est factum [it is not his deed]. But unilateral mistake as a general rule, has no legal effect; e.g., an error of judgment as to the value of a thing. Mistake, however, avoids a contract if as to (1) the nature of the contracts itself (lewis v. Clay (1898) 77 L.T. 653); (2) the identity of the person contracted with, where this is material (Cundy v. Lindsay (1878) L.R. 3 App. Cas. 459); (3) the subject matter of the contract, or the identity of the thing contracted for (Raffes v. Wichelhaus (1864) 2 H. & C. 906; Bell v. Lever Bros. [1932] A.C. 161); (4) the intention or promise of one party known to the other party (Webster v. Cecil (1861) 30 Beav. 62). Mistake is usually no defence in an action of tort. In criminal law, mistake of law is no excuse, but mistake of fact (which if true would have justified the act) is good defence (R.v. Tolson (1889) 23 Q.B.D.168).

Money paid under mistake of fact may be recovered, as money had and received to the use of the person paying it (Jones v. Waring and Gillow [196] A.C. 670), but money paid under mistake of law is not recoverable, except where paid to an officer of the court (Ex p. James (1874) 9 Ch. App. 614) or in case of fraud.

**mitigation.** Where a defendant or prisoner whose responsibility or guilt is not in dispute proves facts tending to reduce the damages or punishment to be awarded against him, he is said to show facts in mitigation of damages, or of sentence, as the case may be.

In general, it is the duty of the party whose legal rights have been infringed to act reasonably in mitigation of mitigation of damages.

**modus.** The payment of tithes otherwise than by a tenth of the yearly increase of land; e.g., by a payment of twopence per acre.

**money-bill.** A bill which in the opinion of the Speaker of the House of Commons contains provisions dealing with finance and taxation.
A money-bill can only originate in the House of Commons, and any bill certified by the Speaker to be a money-bill must be presented for the Royal Assent at the end of the session in which it passes the Commons, whether it is or is not passed by the Lords (Parliament Act, 1911).

**monopoly.** A licence or privilege allowed by the Sovereign for the buying and selling, making, working or using of anything whatsoever. Monopolies were made illegal by the Statute of Monopolies (21 Jac. 1, c. 3), except in the case of patents for new inventions, etc. Ancient franchises (q.v.) are not within the statute.

A commercial monopoly is where the supply of a certain commodity is controlled by one manufacturer, trader, or group. See RESTRICTIVE TRADE PRACTICES.

**moots.** A meeting of the members of an Inn of Court in Hall at which points of law arising in a given case were argued by selected barristers before the benchers who in turn gave their opinions thereon. They were an essential part of professional legal education until about the end of the seventeenth century. They still survive on a voluntary basis at Gray’s Inn, where one of the benchers is appointed “Master of the Moots,” and amongst law students elsewhere.

**mortgage.** [Norman-French, mort, dead, and gage, a pledge, from low latin’ vadium.] A mortgage originally denoted a pledge of land under which the creditor took the rents and profits for himself, so that it was dead or profitless to the debtor, as opposed to a pledge under which the rents and profits went in reduction of the debt (vif gage, vadium vivum).

A legal mortgage is a transfer of a legal estate or interest in land or other property for the purpose of securing the repayment of a deb. An equitable mortgage is one which passes only an equitable estate or interest, either (1) because the form of transfer or conveyance used is an equitable one, that is, operates only as between the parties to it,
and those who have notice of it; e.g., a deposit of title deeds, or (2) because the mortgagor’s estate or interest is equitable, that is, consists merely of the right to obtain a conveyance of the legal estate.

Prior to 1926 a mortgage was ordinarily effected by an absolute conveyance followed by a proviso for redemption, by which the mortgagee agreed to reconvey the property to the mortgagor on payment of the debt and interest by a certain date. Formerly, if the money was not paid on the day, the mortgage became irredeemable at common law, but the mortgagor had an equity of redemption until foreclosure or sale. The right of foreclosure entitled the mortgagee to compel the mortgagor either to pay off the debt within a reasonable time or to lose his equity of redemption.

By s. 85 of the Law of Property Act, 1925, a mortgage of an estate in fee simple may only be made by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage. A first or only mortgagee takes a term of 3,000 years from the date of the mortgage, and a second or subsequent mortgagee takes a term commencing from the date of the mortgage one day longer. By ibid., s. 86, a mortgage of a term of years absolute may only be made either by a subdemise for a term of years absolute less by one day at least than the term vested in the mortgagor, or by a charge by deed expressed to be by way of legal mortgage.

The object of the changes in the law was to secure to the mortgagor a legal estate, and not a mere equity of redemption as hitherto. See EQUITY OF REDEMPTION; CLOG ON EQUITY OF REDEMPTION.

**mortgagee.** The person to whom property is mortgaged; the lender of the mortgage debt.

**mortgagor.** The person who mortgages his property as security for the mortgage debt; the borrower.
motion. An application to a court or a judge for an order directing something to be done in the applicant’s favour. Ordinarily a motion to be made only after a notice has been given to the parties affected (Ord. 52, r. 3), but in certain cases it may be made ex parte. Proceedings in the Chancery Division may be initiated by Originating Motions (Ord. 8).

municipal corporation. The local government authority of a borough, consisting of a mayor, aldermen and councilors, which has been incorporated by royal charter. The effect of the grant of the charter is to bring into operation in the borough the relevant provisions of the Local government Act, 1933, which largely replaced the Municipal Corporations Act 1882.

murder. The crime of unlawful homicide with malice aforethought; as where death is caused by an unlawful act done with the intention to cause death or bodily harm, or which is commonly known to be likely to cause death or bodily harm. Death must result in a year and a day. The burden of proving malice (either express, or by implication) rests upon the prosecution (Wilmington. v. D.P.P. [1935] A.C. 462).

Non-capital murder: where a person kills another in the course or furtherance of some other offence, the killing does not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offence (Homicide Act, 1957, s. 1 (1)).

Capital murder: (a) murder done in the course or furtherance of theft; (b) murder by shooting or causing an explosion; (c) murder done in the course of, or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody; (d) murder of a police officer acting in the execution of his duty, or of a person assisting a police officer so acting; (e) in the case of a person who was a prisoner at the time when he did, or was a party to, the murder,
any murder of a prison officer acting in the execution of his duty, or of a person assisting a prison officer so acting. (Homicide Act, 1957, s. 5). It is punishable by death.

Where death is unintentionally caused in the course of committing a felony, it is immaterial what the killer’s actual intention was, since a reasonable responsible man must be taken to have intended the natural and probable consequences of his act (D.P.P..v. Smith [1960] 3 W.L.R. 546).

In cases of homicide, provocation (q.v.) will reduce the offence from murder to manslaughter. See CONSTRUCTIVE MALICE; REPRIEVE.

mutatis mutandis. [The necessary changes being made. ]

mute. A prisoner who, being arraigned for treason, felony, or misdemeanour, either makes no answer at all, or with such matter as is not allowable. In the first case, a jury must be sworn to try whether the prisoner stands mute of malice (i.e., obstinately) or by visitation of God (e.g., being deaf or dumb). If he is found mute by visitation of God, the trial proceeds as if he had pleaded not guilty; if he is found mute of malice, or if he will not answer directly to the indictment, it formerly exposed him to the peine forte et dure (q.v.); now the court, under the Criminal Law Act, 1827, s. 2, orders a plea of not guilty to be entered, and the trial proceeds accordingly.

N

N.D.C. National Defence Contribution; the tax charged on the profits of all trades or businesses (but not professions) arising in each chargeable accounting period beginning on April 1, 1937 (Finance Act, 1937, ss19-25). It was renamed Profits Tax (q.v.) by the Finance Act, 1946, s. 44.

N.P. Nisi prius (q.v.).

nationality. The character or quality arising from membership of some particular nation or State, which determines the political status and allegiance of a person. It may
be acquired by birth, descent, naturalization (q.v.), conquest or cession of territory, or (if a woman) by marriage. See BRITISH SUBJECT; NATURALISATION.

**natural justice.** The rules and procedure to be followed by any person or body charged with the duty of adjudicating upon disputes between, or the rights of others; e.g., a government department. The Chief rules are to act fairly, in good faith, without bias, and in a judicial temper; to give each party the opportunity of adequately stating his case, and correcting or contradicting any relevant statement prejudicial to his case, and not to hear one side behind the back of the other. A man must not be judge in his own cause, so that a judge must declare any interest he has in the subject-matter of the dispute before him. A man must have notice of what he is accused. Relevant documents which are looked at by the tribunal should be disclosed to the parties interested.

In short, not only should justice be done, but it should be seen to be done: see Local Government Board v.ledge [1915] A.C. 120; Errington v. Minister of Health [1935] 1 K. B. 249; Board of Education v. rice [1911] A.C. 179, per Lord Loreburn at p. 182; R.v. City of Westminster Assessment Committee [1941] 1 K.B. 53.

**naturalization.** When a person becomes the subject of a State to which he was before an alien. Certificates on Naturalization may be granted to aliens or British protected persons of full age and capacity who fulfil certain requirements; whereupon, on taking the oath of allegiance such persons become citizens of the United Kingdom and Colonies by Naturalization (British Nationality Act, 1948). The qualifications required for naturalization of aliens are shortly: residence in British territories, or service with the British Crown, good character, knowledge of English, and the intention to reside in British territories or be in Crown service. The British Nationality Act, 1964, facilitates the resumption or renunciation of citizenship of the United Kingdom and Colonies.

**nec tempus nec locus occurrit regi.** [Neither time nor place affects the King.]
nec vi, nec clam, nec precario. [Not by violence, stealth, or entreaty.] User as of right, in order to found a title by prescription to an easement, must be loggus usus nec per vim, nec clam, nec precario [long use not by violence, stealth or entreaty].

**necessitas inducit privilegium guoad jura privata.** [Necessity gives a privilege as to private rights] See NECESSITY

**necessitas non habet legem.** [Necessity knows no law.]

**necessitas publica major est quam privata.** [Public necessity is greater than private.] A maxim favoured by the Executive (q.v.).

**negligence.** A tort, actionable at the suit of a person suffering damage in consequence of the defendant’s breach of duty to take care to refrain from injuring him.

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do (per Alderson B., Blyth v. Birmingham Waterworks Co. (1856) 11 Ex., at p. 784). Negligence is simply neglect of some care which we are bound to exercise towards somebody (per Bowen L.J., Thomas v. Quartermaine (1887) 18 Q.B.D., at p. 694). You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question (per Lord Atkin, Donoghue v. Stevenson [1932] A.C., at p. 580).

The degree of care which the law requires is that which is reasonable in the circumstances of the particular case. The standard is the foresight and caution of the ordinary or average prudent man; i.e., the man in the street, or on the Clapham omnibus, who takes the magazines at home, and in the evening pushes the lawn
mower in his shirt sleeves (see per Greer L.J., Hall v. Brooklands Auto –Racing Club [1933] 1 K.B., at p. 224). But the standard of care is higher where a person puts a dangerous object attractive to children in a place where they may have access to it. Persons professing special skill must use such skill as is usual with persons professing such skill.

The burden of proving negligence is on the plaintiff who alleges it, and there must be reasonable evidence of negligence for the case to be left to the jury, but where the maxim Res ipsa loquitur (q.v.) applies, the plaintiff merely proves the accident. The Court of Appeal held in Re Polemis ([1921] 3 K.B. p. 560) that a person guilty of negligence was liable in damages for all the direct consequences of such negligence, even though such consequences could not reasonably have been forseen. But in The Wagon Mound ([1961] A. C. 388) the Judicial Committee of the Privy Council refused to follow Re Polemis, and held that damage must be reasonably foreseeable for there to be liability in negligence, but not necessarily the precise sequence of events. See CONTRIBUTORY NEGLIGENCE.

negotiable instrument. An instrument the transfer of which to a transferee who takes in good faith and for value passes a good title, free from any defects or equities affecting the title of the transferor. The most important kinds of negotiable instruments are bills of exchange, cheques and promissory notes. Negotiability may be conferred by custom or statute, and restricted or destroyed by the holder of the instrument. Negotiability is also used popularly as equivalent to transferability.

**nem. con.: nemine contradicente.** [No one saying otherwise.]

**neminem oportet legibus esse sapientiorem.** [It is not permitted to be wiser than the laws.]

**nemo admittendus est inhabilitare seipsum.** [Nobody is to be permitted to incapacitate himself.]

**nemo agit in seipsum.** [No one can take proceedings against himself.]
nemo contra factum suum properium venire potest. [No one can go against his own deed.]

nemo debet his puniri pro uno delicto. [No one should be punished twice for one fault.]

nemo debet esse judex in propria causa. [No one can be judge in his own cause.] A judge may not have any pecuniary or personal interest in a case which he tries. If he has some interest he must declare it, e.g., shares in a company which is party to an action.

nemo est haeres viventis. [No one is the heir of anyone who is alive.]

nemo ex properio dolo consequitur actionem. [No one obtains a cause of action by his own fraud.]

nemo ex suo delicto meliorem suam conditionem facere potest. [No one can improve his position by his own wrongdoing.]

nemo plus juris ad alium transferre potest, quam ipse haberet. [The title of an assignee can be no better than that of his assignor.]

nemo potest esse simul actor et judex. [No one can be at once suitor and judge.]

nemo potest facere per alium, quod per se non potest. [No one can do through another what he cannot do himself.]

nemo potest plus juris ad alium transferre quam ipse habet. [No one can transfer a greater right to another than he himself has.]

nemo prohibetur pluribus defensionibus uti. [No one is forbidden to use several defences.]

nemo tenetur ad impossibile. [No one is required to do what is impossible.]

nemo tenetur se ipsum accusare. [No one is bound to incriminate himself.]

nihil facit error nominis cum de corpore constat. [A mistake as to the name has no effect when there is no mistake as to who is the person meant.]

nisi. A decree, order, rule, declaration, or other adjudication of a court is said to be made nisi when it is not to take effect unless the person affected by it fails to show
cause against it within a certain time, that is, unless he appears before the court, and gives some reason why it should not take effect. See AB SOLUTE.
The petitioner in divorce or nullity proceedings may normally apply for a decree nisi to be made absolute after three months from the granting of the decree nisi, otherwise the respondent may do so (Matrimonial Causes Act, 1950, s. 12; Matrimonial Proceedings (Children) Act, 1958, s. 2).

**nolle prosequi.** An acknowledgment or undertaking entered on record by the plaintiff in an action, to forbear to proceed in the action, either wholly or partially: superseded by the modern practice of discontinuance. In criminal prosecutions by in dictment or information, a nolle prosequi to stay proceedings may be entered by leave of the Attorney-General at any time before judgment; it is not equivalent to an acquittal and is no bar to a new indictment for the same offence.

**nominis umbra.** [The shadow of a name.] E.g., a one-man company.

**non composs mentis.** [Not sound in mind.] E.g., a lunatic or idiot. See MENTAL DISORDER; PATIENT.

**non constat.** [It does not follow.]

**non culpabilis.** [Not guilty.]

**non liquet.** [It is not clear.]

**non omne quod licet honestum est.** [All things that are lawful are not honourable.]

**non placet.** [It is not approved.]

**non possessori incumbit necessitas probandi possessiones ad se pertinere.** [A person in possession is not bound to prove that what he possesses belongs to him.]

**non potest rex gratiam facere cum injuria et damno aliorum.** [The king cannot confer a favour on one man to the injury and damage of others.]
**non pros.; non prosequitur.** [He does not follow up.] Judgment non pors. was available for the defendant in an action when the plaintiff failed to take the proper steps within the prescribed time.

**non refert an quis assensum suum praefert verbis, an rebus ipsis et factis.** [It matters not whether a man gives his assent by his words, or by his acts and deeds.]

**non refert quid notum sit judici, si notum non sit in forma judicii.** [It matters not what is known to the judge, if it be not known judicially.]

**noscitur a sociis.** [The meaning of a word can be gathered from the context.]

**Notary Public.** A person who attest the execution of any deeds or writings, or makes certified copies of them in order to render the same authentic, especially for use abroad. He is appointed to his office by the Archbishop of Canterbury, and can be removed from office by the Court of Faculties.

**nuisance.** An inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober, simple notions among the English people (per Knight-Bruce V.C., Walter v. Selfe, 4 De G. & Sm. 332).

A public or common nuisance is an act which interferes with the enjoyment of a right which all members of the community are entitled to, such as the right to fresh air, to travel on the highways, etc. The remedy for a public nuisance (which is a misdemeanour) is by indictment, information or injunction at the suit of the Attorney-General, and in certain cases by summary process, or abatement (q.v.). If special damage is caused to an individual, he has an action for damages or injunction against the wrongdoer.

A private nuisance is a tort consisting of (1) any wrongful disturbance or interference with a person’s use or enjoyment of land or of an easement or other servitude appurtenant to land; (2) the act of wrongfully causing or allowing the escape of
deleterious things into another person’s land; e.g., water, smoke, smell, fumes, gas, noise, heat, vibrations, electricity, disease-germs, animals, and vegetation. Nuisance is commonly a continuing injury, and is actionable only at the suit of the person in possession of the land injuriously affected by it: there must be actual damage to the plaintiff. The remedy for a private nuisance is either by abatement (q.v.) or by action for damages, injunction or mandamus.

**mulla bona.** [No goods.] The return made by a sheriff to a writ or warrant authorising him to seize the chattels of a person, when he has been unable to find any to seize.

**O**

**laths.** An oath is a religious asseveration by which the party calls his God to witness that what he says is the truth, or that what he promises to do he will do. Evidence is given on oath “for the law presumeth that no man will forswear himself for any worldly thing” (2 Coke upon Littleton, 294B. The Oaths Act, 1888, and the Oaths Act, 1961, allow an affirmation to be made instead of an oath. See also the Oaths and Evidence (Overseas Authorities and Countries) Act, 1963. The form of oath to be used in juvenile courts is prescribed by the Children and Young Persons Act, 1963, s. 28. See PERJURY.

**obiter dictum.** [A saying by the way.] An observation by a judge on a legal question suggested by a case before him, but not arising in such a manner as to require decision. It is therefore not binding as a precedent. But there is no justification for regarding as obiter dictum a reason given by a judge for his decision because he has given another reason also.

**obligation.** A duty: the bond of legal necessity which binds together two or more determinate individuals. It is limited to legal duties arising out of a special personal relationship existing between them, whether by reason of a contract or a tort, or otherwise, e.g., debtor and creditor. See LIABILITY.
obligee. One to whom a bond is made.
obligor. One who binds himself by bond.

obscene. A publication, the tendency of which is to deprave and corrupt those whose minds are open to immoral influences, and into whose hands it is likely to fall (per Cockburn C.J., R.v. Hicklin, L.R. 3 Q.B. at p. 371). Obscene publications or libels were punishable with fine or imprisonment, being misdemeanours at common law.

By the Obscene Publications Act, 1959, an article is deemed to be obscene if its effect (or if composite, the effect of any one of its items) is, if taken as a whole, such as to deprave or corrupt persons likely to read, see, or hear the contents of it (s.1). Sect. 4 provided that a person should not be convicted if it is proved that the publication of the article in question is justified as being for the public good on the ground that it is in the interest of science, literature, art or learning, and that the opinion of experts may be admitted. Premises may be searched and obscene articles seized and forfeited. See R.v. Penguin Books [1961] Crim. L.R. 176(Lady Chatterley’s Lover).

occupant. See TENANT PUR AUTRE VIE.

occupation. (1) The exercise of physical control or possession of land; having the actual use of land: (2) Taking possession of enemy territory by the armed forces.

offer. The offer of a promise which when accepted constitutes an agreement. The formula of a true offer is “I promise, if you will in return make a certain promise or do a certain act.” It must be distinguished from an invitation to others to make offers; e.g., as by an auctioneer. An offer any be withdrawn or revoked at any time before it has been unconditionally accepted; or it may be rejected; or lapse because of the death of the offeror, or by non-acceptance within a reasonable time. An acceptance of an offer “subject to contract,” does not constitute a binding contract, because it is not unconditional.
office. (1) Offices are either public or private, a public office being one which entitles a man to act in the affairs of others without their appointment or permission.

(2) Office premises means a building, or part, used for office purposes, including administration, clerical work, handling money, and telephone and telegraph operating (Offices, Shops and Railway Premises Act, 1963, s. 1 (1) (2)). The main object of that Act is to set standards of health, welfare and safety for employees in such premises.

omne quod inaedificatur solo cedit. [Everything which is built into the soil is merged therein.]

omne testamentum morte consummatum est. [Every will is completed by death] A will is ambulatory until death.

omnes licentiam habent his, quae pro se indulta sunt, renunciare. [Everyone has liberty to renounce those things which are granted for his benefit.]

omnia praesumuntur contra spoliatorem. [All things are presumed against a wrongdoer.] As in Armory v. Delamirie (1722) I Strange 504, where jewels were presumed, as against a wrongful possessor, to be of the finest quality.

omnia praesummuntur legitime facta donec probetur in contrarium. [All things are presumed to have been legitimately done, until the contrary is proved.]

omnia praesumuntur rite et solenniter esse acta. [All acts are presumed to have been done rightly and regularly.]

onerous. A right of property, e.g., a lease, in which the obligations attaching to it counterbalance or exceed the advantage to be derived from it.

onus probandi. [The onus of proof (q.v.).]

op. cit. The book previously cited.
oppression. The common law misdemeanour committed by a public officer, who, under colour of his office, wrongfully inflicts upon any person any harm or injury.

ordeal. The most ancient mode of trial: it involved an appeal to the supernatural or the judicium Dei. The ordeal by fire consisted of taking up in the hand a piece of red-hot iron, or of walking barefoot and blindfold over red-hot ploughshares. If the party was unhurt he was innocent; if otherwise, he was guilty. Ordeal by hot water was performed by plunging the arm in boiling water, with similar consequences. The cold water ordeal consisted of throwing the offender in a pond or river; if he sank he was innocent, and if he floated he was guilty. The ordeal was abolished in the reign of Henry III, and was ultimately replaced by the trial by jury.

order. A command or direction; used in law with particular reference to Courts of Justice. The directions of a court in a proceeding or matter other than a decree of judgment are termed “orders.” The code of procedure of the Supreme Court consists of Orders subdivided into Rules.

ordinance. (1) Formerly an Act of Parliament which lacked the consent of one of the three elements, Crown, Lords, and Commons. (2) A declaration of the Crown lacking the authority of Parliament.

ouster. The deprivation of a person of his freehold.

outstanding. The legal estate in land was said to be outstanding when it had been conveyed to a mortgagee, and had not been reconveyed to the mortgagor when the mortgage debt had been cleared off. Similarly, an outstanding term is a term of years which has not come to an end although the purpose for which it was created has been realised. See SATISFIED TERM.

overdue. A bill of exchange is said to be overdue when the time for its payment has passed or, if it is a bill payable on demand, when it appears to have been in circulation
for an unreasonable length of time (Bills of Exchange Act, 1882, s. 36 (3)). Anyone taking an overdue bill takes it subject to the equities of prior holders (ibid., s. 36 (2)).

**overriding trust.** A trust which takes precedence of other trusts previously declared.

**overt act.** An open act; an act capable of being observed, and from which an intention may be deduced. See TREASON.

**ownership.** The right to the exclusive enjoyment of a thing (Austin). Strictly, it denotes the relation between a person and any right that is vested in his (Salmond). Ownership is absolute or restricted. Absolute ownership involves the right of free as well as exclusive enjoyment, including the right of using, altering, disposing of or destroying the thing owned. Absolute ownership is of indeterminate duration. (Land is in strictness not subject to absolute ownership because it cannot be destroyed, and because of the theory that all land is ultimately held of the Crown.) Restricted ownership is ownership limited to some extent; as, for example, where there are several joint owners, or a life tenancy, or where the property is charged with the payment of a sum of money, or subject to an easement. Beneficial ownership is the right to the enjoyment of a thing as contrasted with the legal or nominal ownership. Ownership is always subject to the rule that a man must so use his own property as not to injure his neighbour. See REPUTED OWNERSHIP.

**oyer and terminer.** [To hear and determine.] A commission to the judges to try offences committed in a certain area. See ASSIZE.

**P**

**P.A.Y.E.** [Pay as you earn.] The system of collection of income tax by deductions made by the employer from emoluments assessable to tax under Sched. E of the Income Tax Act, 1952, paid to the employee, in such a way, by reference to tax tables, that the periodical deductions of tax keep pace as far as possible with the accruing
liability to tax of the employee. See ibid., Part VI. The Income Tax (Employment) Regulations, 1962, consolidated the regulations relating to P.A.Y.E.

P.C. Privy Council.

P.P.I. [Policy proof of inerest.] A policy of marine insurance where the assured has no insurable interest. It is void (Marine Insurance Act, 1906, s. 4). It is an offence to effect a contract by way of gambling on loss by maritime perils (Marine Insurance (gambling Policies) Act, 1906).

pacta dant legem contractui. [Agreements constitute the law of the contract.]

pacta quae contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere, indubitati juris est. [It is undoubted law that agreements which are contrary to the laws and constitutions, or contrary to good morals, have no force.]

panel. The printed list, made up by the sheriff, of the persons who have been summoned to serve as jurors for the trial of all actions at a particular sittings.

paramount. Superior.

parcels. Parts or portions of land. The part of an instrument following the operative words which contains a description of the property dealt with.

pardon. The release by the Crown of a person from punishment incurred for some offence. A pardon may be granted either (1) before or during prosecution, in which case it may be pleaded in bar, or (2) after conviction, in which case it may be pleaded in arrest of judgment or in bar of execution, so that the offender is discharged from punishment. Some offences, however, cannot be pardoned; e.g., a common nuisance while it remains unredressed: and a pardon cannot be pleaded to a parliamentary impeachment
Parliament. The sovereign legislative authority in the Constitution consisting of the Queen, the House of Lords, and the House of Commons. Originally all legislation required the assent of both Houses of Parliament. Bills, other than a money (or finance) Bill, may be introduced into either House. With regard to money Bills (which are introduced in the House of Commons), it was a convention that the House of Lords might reject, but could not amend, them. The Parliament Act, 1911, was enacted to enable, exceptionally, legislation to be effected by the King and Commons alone. Thus if the House of Lords fail within one month to pass a Bill which, having passed the Commons, is sent up endorsed by the Speaker as a money Bill before the end of the session, it maybe presented for the Royal assent without the consent of the House of Lords. With regard to non-money Bills, the Act provided in effect for a suspensory veto for the House of Lords.

The Parliament Act, 1911, was amended by the Parliament Act, 1949, which reduced the “suspensory period” from three to two successive sessions: the 1949 Act itself was passed under the 1911 Act provisions without the consent of the House of Lords. The duration of Parliament is for five years, but it has the power of prolonging its own life by Act of Parliament.

parol. Verbal or oral; not in writing or under seal.

parricide. The killing of a father.

part performance. The equitable doctrine that where a contract is not enforceable for want of some formality, if the contract has been partly carried into effect by one of the parties (the plaintiff) the other (the defendant) cannot set up the informality. Thus section 40 of the Law of Property Act, 1925, requires contracts for the sale or other disposition of land to be in writing, but the section expressly recognizes the doctrine of part performance, so that if the purchaser has gone into possession of the land, equity will enforce the contract. The acts of the plaintiff in part performance of a contract must be unequivocally and exclusively referable to a completed agreement (
Maddison v. Alderson (1883) 7 App. Cas. 467) and must be such that it would amount to fraud in the defendant to take advantage of the want of writing. Verbal evidence must be given of the terms of the contract.

**partition.** The division of land owned by persons jointly among the owners in severalty. Partition was either voluntary by deed or compulsory by order of the court. Until the partition act, 1868, the court had no power to order a sale and division of the proceeds instead of a partition of the property itself. By the operation of the Law of Property Act, 1925, land belonging to joint owners is vested in trustees on trust for sale, with power to postpone the sale, and the Partition Acts are repealed.

**partnership.** The relation which subsists between persons carrying on business in common with a view to profit (Partnership Act, 1890, s. 1). The relationship between the members of an incorporated company is not that of partnership. A partnership firm is not a separate legal entity in English law. The rights of partners between themselves is governed by the partnership agreement, or deed of partnership.

In general, every partner is entitled and bound to take part in the conduct of the business, unless it is otherwise agreed between them. Every partner is liable for the debts of the partnership to the whole extent of his property, As between the partners, each partner is bound to contribute to the debts in proportion to his share of the profits, unless otherwise agreed. As regards third persons, the act of every partner, within the ordinary scope of the business, binds his co-partners, whether they have sanctioned it or not. The relation between the partners being personal, no one of them can put a stranger in his place without the consent of the others. Where no time for the duration of the partnership is fixed, it is called a partnership at will, and may be dissolved at the pleasure of any partner. Dissolution takes place by bankruptcy, or (unless otherwise agreed) by the death of a partner, or on an order of dissolution being made by the court on the ground of the insanity, incapacity, misconduct of a partner, or of the hopeless state of the business (Partnership Act, 1890, ss. 32-35; Ord. 81).
A limited partnership is one in which, although there must be one or more partners responsible for all the liabilities of the partnership, there may be one or more partners who are under no liability if they contribute an agreed sum for partnership purposes, provided that they take no part in the management, and that the partnership is registered as a limited partnership (see the Limited Partnership Act, 1907).

**party.** A person who takes part in a transaction or legal proceeding.

**passage.** The right of way over private water: an easement.

**passim.** [In various places; everywhere in the book.]

**passport.** The document (in book form) issued by the Foreign Office to responsible persons who contemplate travelling abroad, containing particulars enabling the bearer to be identified, and a request to all concerned to allow the bearer to pass without let or hindrance and to afford him all necessary assistance and protection.

It is a misdemeanor to forge or to make false statements for procuring a passport (Criminal Justice Act, 1925, s. 36).

In international law, it means primarily the document issued by a belligerent to a diplomatic representative of an enemy State after the outbreak of war, to enable him to return to the country he represents, by virtue of the right of immunity of diplomatic representatives.

**patent.** (1) Letters patent from the Crown, as, e.g., conferring a peerage. (2) The right conferred by letters patent of the exclusive use and benefit of a new invention. A patent is obtained by making to the Patent Office an application accompanied by a specification, and, when granted, is sealed with the seal of the Patent Office. Its normal duration is sixteen years, but the period may be extended. There is a right of appeal from the Comptroller of Patents to the Patents Appeal Tribunal.
The Patents Act, 1949, is a consolidation Act and came into force together with the Registered Designs Act, 1949. See also the Patents and Designs (Renewals, Extensions and Fees) Act, 1961.

**patria potestas.** [Roman Law.] The rights enjoyed by the head of a Roman family (paterfamilias) over his legitimate children. It was acquired by (1) birth, (2) legitimation, (3) adoption. It was lost by (1) death of the paterfamilias, (2) by loss of status of parent or child, (3) by promotion of the son to the patriciate, (4) by emancipation.

**penalty.** (1) A punishment, particularly a fine or money payment. (2) The nominal sum payable (a) by an obligor on breach of the condition in bond; (b) on breach of a term in a contract. In each case only the sum representing the actual loss can be recovered, as equity will relieve against a penalty.

Whether a sum specified in a contract as being payable on breach thereof is a penalty or an agreed sum for damages is a question of construction of the contract judged as at the time of the making of it. The use of the term “penalty” or “liquidated damages” is not conclusive. The essence of a penalty is a payment of money stipulated as in terrorem of the offending party; the essence of liquidated damages is a genuine covenanted pre-estimate of damage. If the sum specified is extravagant and unconscionable in amount in comparison with the greatest loss conceivable, it is a penalty. Where the payment of a smaller sum is secured by a larger, the larger is a penalty. There is a presumption that a single sum payable on the occurrence of a number of different events, with very varying damage ensuing, is a penalty, but not if the damage is the same in kind for every possible breach and is incapable of precise pre-estimation, and if the sum is fair and conscionable (see Dunlop Pneumatic Tyre Co. v. New Garage and Motor Co. [1915] A.C. 79).

**per annum.** [By the year.]
**per capita.** [By heads.] Individually. Distribution of the property of an intestate is per capita if it is divided amongst all entitled to it in equal shares. See PERSTIRPES.

**per cur.: per curiam.** [By court.]

**per invuriam.** [Through want of a care.] A decision of the court which is mistaken. A decision of the court is not a binding precedent if given per incuriam; i.e., without the court’s attention having been drawn to the relevant authorities, or statutes.

**per stirpes.** [By stock or ranches.] Distribution of the property of an intestate is per stirpes if it is divided amongst those entitled to it according to the number of stocks of descent; that is, if it is divided equally amongst the surviving children of an intestate individually, and the descendants of deceased children collectively, so that the descendants of a deceased child take that child’s share between them.

**peremptory.** An order or writ which admits of no excuse for non-compliance.

**perjury.** False swearing. The making on oath by a witness or interpreter in a judicial proceeding of a statement material in that proceeding, which he knows to be false or which he does not believe to be true. Perjury is a misdemeanour, but no conviction can be made on the evidence of one witness only. See the Perjury Act, 1911.

**perpetuity.** A disposition of property by which its absolute vesting is postponed forever. Perpetuities are contrary to the policy of the law, because they “tie up” property and prevent its free alienation. The rule against perpetuities forbids any disposition by which the absolute vesting of property is or may be postponed beyond the period of the life or lives of any number of persons living at the time of the disposition, and the further period of twenty-one years after the death of the survivor, with the possible addition of the period of gestation (Cadell v. Palmer (1833) 1Cl. & Fin. 372). The “lives in being” must be those referred to in the disposition and must be ascertainable. If there is no reference to lives in being, the period is twenty-one years.
By the Law of Property Act, 1925, s. 163, a limitation or gift which would be void as
dependent upon the beneficiary attaining an age exceeding twenty-one years is to be
construed as if the age specified had been twenty-one years. (It is proposed to
substitute the period of 80 years as the “perpetuity period.”)

persona. (Roman Law.] (1) A human being. (2) A being or entity capable of enjoying
legal rights, or subject to legal duties; e.g., a person or corporation. (3) A man’s
political and social rights collectively; his legal capacity.

personation. The act of representing oneself to be someone else, whether living or
dead, real or fictitious. It is a felony by various statutes.

petition. A written statement addressed to the Crown, a court or public officer, setting
forth facts on which the petitioner bases a prayer for remedy or relief. Proceedings in
the Probate, Divorce and Admiralty Division, ion Bankruptcy, in the House of Lords
and Privy Council are commenced by petition. An originating petition is also one of
the methods of initiating proceedings in the Chancery Division where required by
statute (Ord. 9).

The right of the subject to petition the Crown or Parliament was affirmed by the court
in the case of the Seven Bishops (12 St. Tr. 183), and in the Bill of Rights. But violent
and tumultuous petitioning is forbidden by the statute 13 Car. 2, st. 1, c.5.

petition of right. (1) The mode by which a subject could claim relief from the Crown
for certain kinds of injury arising from the acts of the Crown or its servants; e.g., an
illegal seizure of goods, or a claim for breach of contract. The petition could be
presented in any of the divisions of the High Court on the Home Secretary granting
his flat for that purpose (Petition of Right Act, 1860, s. 1); proceedings by way of
Petition of Right were abolished by the Crown Proceedings Act, 1947, s. 23, and First
Sched. See CROWN PROCEEDINGS. (2) The statute 3 Car. 1, c. 1.
piracy. (1) The act of robbery on the seas within the jurisdiction of he admiral, and not being an act of war. Certain acts also constitute piracy by statute. piracy is punishable with imprisonment for life, unless it is accompanied by attempted murder, or violence dangerous to life, in which case the punishment is death (Piracy Act, 1837, s. 2). Actual robbery is not an essential element in the crime of piracy jure gentium (in International Law). A frustrated attempt to commit a piratical robbery is equally piracy jure gentium (see Re Piracy Jure Gentium [1934] A.C. 586). (2) The infringement of copyright.

plaint. The cause for which the plaintiff complained against the defendant and for which he obtained a writ or summons.

plaintiff. One who brings an action at law.

plea. The reply to a “plaint”; a mode of defence in an action at law. In a criminal prosecution the prisoner has to plead to the indictment, which he may do (1) by pleading to the jurisdiction, that is, alleging that the court has no jurisdiction to try him; (2) by a demurrer (q.v.); or (3) by some plea in bar, either a general plea, “guilty,” or “not guilty,” or a special plea, such as “autrefois acquit.”

Formerly in a civil action pleas were of two kinds, dilatory and peremptory. The former included pleas to the jurisdiction, pleas in suspension, e.g., an allegation of infancy, and pleas in abatement; the latter consisted of pleas in bar which showed a substantial defence to the action, either by traverse or by confession and avoidance (q.v.).

Pleas a have been superseded by the Statement of Defence.

pleadings. Written or printed statements delivered alternately by the parties to one another, until the questions of fact and law to be decided in an action have been ascertained; i.e., until issue is joined. The pleadings delivered (a) by the plaintiff, (b) by the defendant, are as follows: (1) (a) statement of claim; (b) defence. (2) (a) reply.
There also exist 2 (b) rejoinder, 3 (a) surrejoinder; (b) rebutter; (4) surrebutter; but they are seldom used.

Every pleading must state facts and not law, it must state the material facts only and in a summary form, and it must not state the evidence by which the facts are to be proved. Facts not denied specifically or by necessary implication, or stated to be not admitted, are taken to be admitted except as against persons under disability (Ord. 18). See COUNTERCLAIM.

pledge. The transfer of the possession (but not ownership) of a chattel as security for the payment of a debt or performance of an obligation. On default being made the chattel may be sold. See PAWNBROKER.

plenipotentiary. Having full powers.

poaching. The offence of unlawfully taking or destroying game on another man’s land. See the Night Poaching Act, 1828; Poaching Prevention Act, 1862; Game Laws (Amendment) Act, 1960, s. 3.

poll. Taking a vote at an election, or on a motion. At a general meeting of members of a company, etc., questions are decided in the first place by show of hands, but there is a right of members to demand a poll, unless expressly excluded, and, if demanded, it must be taken. The usual method is to require the persons present in person (or, normally, by proxy) to sign a paper headed “for” or “against” the motion. The poll is taken by counting these votes.

possession. Physical detention coupled with the intention to hold the thing detained as one’s own (Maine). The continuing exercise of a claim to the exclusive use of a material object (Slamond). Possession has two elements: (1) the corpus, or the thing possessed; (2) the animus possidendi, the intention to appropriate to oneself the exclusive use of the thing possessed.
Immediate possession is possession retained personally; mediate possession or custody is possession retained for or on account of another. Incorporeal possession is the possession not of a material thing, but of a legal right. Constructive possession is possession in contemplation of law as opposed to de facto possession or actual possession in fact.

Possession is prima facie evidence of ownership. “Possession is nineteenths of the law” means that possession is good against all the world except the true owner. Possession ripens into ownership by effluxion of time. Adverse possession of land (i.e., not by agreement with the owner) for twelve years destroys the title of the owner and vests it in the possessor. The holder of a negotiable instrument, a factor, and a seller in market overt, can give a better title than he himself has, provided the buyer takes in good faith and for value.

**post-mortem examination.** A medical examination of a corpse in order to discover the cause of death. It may be ordered by a coroner under s. 21 of the Coroners Act, 1887. It may be made without an inquest (Coroners (Amendment) Act, 1926, s. 21).

**power of attorney.** A formal instrument by which one person empowers another to represent him, or act in his stead, for certain purposes; usually in the form of a deed poll, and attested by two witnesses. The donor of the power is called the principal or constituent; the donee is called the attorney (Law of Property Act, 1925, ss. 123-129). The attorney is not entitled to exercise his powers for his own benefit; e.g., draw cheques on the principal’s account to pay his own debts (see Reckitt v. Barnett, Pembroke and Slater [1929] A.C. 176). See also Evidence and Powers of Attorney Acts, 1940, 1943.

**preamble.** The recitals set out in the beginning of a statute showing the reason for the Act. The necessity for a private Bill must be shown by “proving the preamble” To
“argue on the preamble” is to submit that a case comes within the provisions of an Act, because it is within the spirit and intent of the Act as shown by the preamble.

**pre-emption.** The right of purchasing property before or in preference to other persons. In international law, pre-emption is the right of a government to purchase, for its own use, the property of the subjects of another Power in transitu, instead of allowing it to reach its destination.

**prejudice.** Injury. A statement which is made “without prejudice” for the purpose of settling a dispute cannot be construed as an admission of liability or given in evidence.

**premium.** (1) A sum payable in advance of or over and above the consideration for an agreement. Premiums on a lease are any sum paid on or in connection with the granting of a tenancy, or any like sum (Finance Act, 1963, s. 32). They are liable to income tax (ibid., s. 22). (2) The consideration for a contract of assurance.

**prerogative writs.** Writs which issued from the superior courts for the purpose of preventing inferior courts, or officials, from exceeding the limits of their legitimate sphere of action, or of compelling them to exercise their functions in accordance with the law, to assure the full measure of justice to the King’s subjects. These writs were: (1) Habeas Corpus; (2) Certiorari; (3) Prohibitions; (4) Mandamus; (5) Quo Warranto; (6) Ne Exeat Regno; (7) Procedendo. They were within the jurisdiction of the King’s Bench Division.

The administration of Justice (Miscellaneous) Act, 1933, s. 5, provided for amendment of procedure as to the writs numbered (2)–(4) above.

By the Administration of Justice (Miscellaneous Provisions) Act, 1938, orders of mandamus, prohibition and certiorari were substituted for the corresponding writs. See QUO WARRANTO.
**prescription.** The vesting of a right by reason of lapse of time. Negative prescription is the divesting of a right by the same process. In Roman Law the praescriptio was a clause placed at the head of the formula or pleadings (prae, before and scribere, to write). Praescriptio was also a variety of usucapio, i.e., a mode of acquiring property by undisturbed possession for a certain length of time.

At common law, a title by prescription was acquired by the enjoyment of a right from time immemorial, or time out of mind, from which an original grant was implied. Such user would be presumed from evidence of long actual user, but the presumption might be rebutted by proof that the enjoyment had in fact commenced within legal memory. The doctrine of the lost modern grant overcame this difficulty by presuming from long user that an actual grant of the easement or profit was made at some time subsequent to 1189, but prior to the user supporting the claim, and that unfortunately this grant had been lost.

The Prescription Act, 1832, enacts that in the case of rights of common and other profits a prendre, the period of enjoyment as of right required to establish the title is thirty years, subject to an extension in case the person against whom it is claimed was under disability during part of that period; but enjoyment for sixty years establishes an absolute right. In the case of rights of way and watercourses, the terms are respectively twenty and forty years, and of light, enjoyment for twenty-seven years gives an absolute right. Where a person claiming a right by prescription proves that it has been enjoyed by him and his predecessors in title in virtue of certain lands, he is said to prescribe in a que estate. Prescription in gross arises where a person claims that he and his ancestors have from time immemorial exercised a right to profits a prendre over the land of another. See MEMORY; SQUATTER’S TITLE.

**presumption.** A conclusion or inference as to the truth of some fact in question, drawn from other facts proved admitted to be true.
(1) Irrebuttable or conclusive presumptions (presumptiones juris et de jure) are absolute inferences established by law; evidence is not admissible to contradict them: they are rules of law. See e.g., DOLI INCAPAX.

(2) Rebuttable presumptions of law (praesumptiones jures) are inferences which the law requires to be drawn from given facts, and which are conclusive until disproved by evidence to the contrary; e.g., the presumption of the innocence of an accused person.

(3) Presumptions of act (praesumptiones hominis vel facti) are inferences which may be drawn from the facts, but not compulsorily.

**prima facie case.** [Of first appearance.] A case in which there is some evidence in support of the charge or allegation made in it, and which will stand unless it is displaced. In a case, which is being heard in court, the party starting, that is, upon whom the burden of proof rests, must make out a prima facie case, or else the other party will be able to submit that there is no case to answer, and the case will have to be dismissed.

**primo loco.** [In the first place.]

**principal.** (1) A principal of the first degree is the actual perpetrator of a crime; a principal of the second degree is one who is present, aiding and abetting.

(2) A principal is one who authorizes another to act on his behalf, called the agent. If an agent purports to act on his own behalf, his principal is called an undisclosed principal. In general, the third party can use the undisclosed principal when he discovers his existence.

(3) A principal debtor is one who owes a debt which is guaranteed by a surety.

(4) A sum of money put out at interest.

**prisons.** The Home Secretary has general control over prisons. The functions of the Prison Commissioners were transferred to the Home Secretary by Order in Council under the Criminal Justice Act, 1961, s. 24. Prisoners are deemed to be in the legal
custody of the Prison Governor. Sentences of imprisonment may be remitted for good conduct, and certain prisoners may be released on licence of given temporary or conditional discharge. The enactments relating to prisons were consolidated by the Prison Act, 1952, as amended. See ESCAPE.

**private international law.** Conflict of Laws. The body of rules for determining questions of jurisdiction, and questions as to the selection of the appropriate law, in civil cases which present themselves for decision before the courts which involve a “foreign element.” Its objects are to prescribe the conditions under which the court is competent to entertain such a suit; to determine for each class of case the particular internal system of law by reference to which the rights of the parties must be ascertained; to specify the circumstances in which a foreign judgment can be recognised as decisive of the question in dispute, and when the rights vested in a creditor by a foreign judgment can be enforced by action in England. (Cheshire.)

**privilege.** An exceptional or extraordinary right, immunity or exemption belonging to a person in virtue of his office or status; e.g., the immunity from arrest of ambassadors, Members of Parliament or barristers on circuit.

A man attacks the reputation of another at his own risk, but a defamatory statement is privileged as follows. (1) A statement is absolutely privileged when no action will lie for it even if it is made with malice (q.v.); e.g., statements made in the course of judicial proceedings. (2) Qualified privilege is where a person is not liable to an action for defamation unless he is guilty of malice; e.g., statements made in the course of duty, reports of proceedings, etc.

In the law of evidence, the following matters are protected from disclosure on the grounds of privilege: (1) professional confidences; (2) title-deeds, etc., of a stranger to the action; (3) matrimonial communications; (4) criminating questions; (5) questions as to adultery in divorce cases (Matrimonial Causes Act, 1950, s. 32 (3)). See CROWN PRIVILEGE.
privilegium non valet contra rempublicam. [A privilege avails not against the State.]

privity. The relationship in which a person stands to a transaction in which he is a party, or to some other party with whom he is connected.

Privity of contract is the relation which exists between the immediate parties to a contract (q.v.) which is necessary to enable one person to sue another on it.

Privity of estate is that which exists between lessor and lessee, lessor and assignee (but not lessor and underlessee), tenant for life and remainderman or reversioner, etc.

Privity of estate is required for a release by enlargement. Thus, if A grants land to B for life, and B grants a lease to C, and then A executes a release to C, this is void as a release, because there is no privity between A and C. An original lessee is always liable to the lessor on the covenants of a lease, but an assignee is only liable, and entitled to the benefit of the covenants, so long as he holds and until he further assigns the lease, because thereupon there ceases to be any privity between him and the lessor.

Privy Council. Nominally, the principal council of the Crown, consisting of persons of distinction, nominated by the Crown to the office, and bearing the title “Right Honourable.”

Members of the Cabinet are always Privy Councillors, as the Cabinet itself evolved from the Privy Council. See JUDICIAL COMMITTEE.

pro forma. [As a matter of form.]

pro rata. [In proportion.]

pro tanto. [For so much; to that extent.]

probate. A certificate granted by the Probate Division of the High Court of Justice to the effect that the will of a certain person has been proved and registere,, s. ( s. ( d in the court and that administration of his effects has been granted to the executor
proving the will, he having first sworn faithfully to administer them and to exhibit a true inventory and render a just account when called on. The copy of the will is termed the “Probate copy.”

**Probate, Divorce and Admiralty Division.** The Division of the High Court of Justice under the President which exercise jurisdiction in matters formerly within the exclusive cognisance of the Court of Probate (q.v.), the Court for Divorce and Matrimonial Causes (q.v.) and the Court of Admiralty (see Judicature Act, 1925, s. 4 (3)). See ADMIRAL.

**proclamation.** The King cannot by his Proclamation create any offence which was not an offence before. But the King, for prevention of offences, may be proclamation admonish his subjects that they keep the laws (The Case of Proclamations (1610) 12 Rep. 74). See EMERGENCY POWERS; PREROGATIVE.

**proctors.** In the Ecclesiastical and Admiralty Courts proctors discharged duties similar to those of solicitors and attorneys in other courts. By the Judicature Act, 1873, s. 87, proctors were entitled solicitors of the Supreme Court.

**prohibition.** A writ formerly issuing out of the High Court to restrain an inferior court from exceeding its powers. Prohibitions were of three kinds. (1) An absolute prohibition was peremptory, and wholly tied up the interior jurisdiction. (2) A temporary prohibition (a prohibition quousque) was operative only until a particular act was done, and was ipso facto discharged on the act being done. (3) A limited or partial prohibition (a prohibition quoad) extended only to that part of the proceeding which exceeded the jurisdiction of the inferior court, allowing it to proceed as to the residue.

The writ of prohibition has been replaced by an order of prohibition (Ord. 59) which is used not only to restrain an inferior court from exceeding its jurisdiction, or acting
contrary to the rules of natural justice, but also to control a minister or public authority in the exercise of their judicial or quasi-judicial functions.

**proof.** A fact is said to be proved when the court is satisfied as to its truth, and the evidence by which that result is produced is called the proof. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof: that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut the presumption.

Proving a debt is establishing the existence of a debt owing from a bankrupt’s estate. To prove a will is to obtain probate of it.

**property.** That which is capable of ownership; also used as meaning a right of ownership, as “the property in the goods.”

General property is that which every absolute owner has. Special property may mean:

1. that the subject-matter is incapable of being in the absolute ownership of any person; e.g., wild animals;
2. that the thing can only be put to a particular use, e.g., in the case of a bailment.

**propositus.** The person put forward, when there is a class ascertained by their relationship to a certain person; e.g., as regards the children of A, A is the propositus.

**prorogation.** The bringing of a session of Parliament to an end by an exercise of the royal prerogative. Bills lapse on a prorogation and must be reintroduced in the new session.

**prosecutor.** A person who takes proceedings against another in the name of the Crown; usually either the person injured, or the police, or in graver crimes the Director of Public Prosecutions.
prospectus. A document setting forth the nature and objects of an issue of shares, debentures or other securities created by a company or corporation, and inviting the public to subscribe to the issue. See Companies Act, 1948, s. 455. See also ibid., ss. 37-46.

prostitution. It is an offence, punishable with fines and imprisonment, for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution (Street Offences Act, 1959, s. 1). It is a misdemeanour for a man, knowingly to live wholly or in part on the earnings of prostitution (Sexual Offences Act, 1959, ss. 30-32; Street Offences Act, 1959, s. 4; Shaw v. D.P.P. [1961] 2 W.L.R.897). Prostitution is not confined to sexual connection, but includes participation in physical acts of indecency with men (R. v. Webb [1963] 3 All E.R. 177). See IMMORALITY.

protocols. The minutes or records of the proceedings of an international conference, or drafts, signed by the delegates, to serve as the basis for the final instrument.

proviso. A clause in a deed or other instrument beginning “provided always that” (in Latin, proviso semper).

provocation. Acts which are sufficient to prevent the exercise of reason and to deprive a reasonable man of his self-control, so negating the existence of malice, and thus reducing the crime of homicide from murder to manslaughter, mere words, save in extreme and exceptional circumstance, are not sufficient.

Where on a charge of murder there is evidence of provocation, the question whether the provocation was enough to make a reasonable man do as he did is to be left to the jury to determine, they taking into account all that was both done and said (Homicide Act, 1957, s. 3).
**proxy.** A lawfully constituted agent; a person deputed to vote for another. Under the Companies Act, it denotes (1) a person appointed to represent another at a meeting or number of meetings; (2) the instrument containing the appointment.

**public document.** A document made for the purpose of the public making use of it; e.g., registers kept by public officers, judicial records, etc. A record kept for the information of the Crown and the executive, however, is not a public document and production of it in court can be refused if it is considered contrary to the public interest to produce it. The contents of a public document are proved by producing the document itself for inspection from the proper custody and identifying it as what it purports to be, or an examined copy. An entry by a public officer in a public document is presumed to be true when made and is receivable as evidence accordingly.

**public order.** It is an offence to use threatening, abusive or insulting words or behaviour in public with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be caused: Public Order Act, 1936, s. 5, as amended by the Public Order Act, 1963. The 1936 Act also proscribed private uniforms and armies.

public policy. Certain classes of acts are said to be against public policy, or against the policy of the law, when the law refuses to enforce or recognise them on the ground that they have a mischievous tendency so as to be injurious to the interests of the State or the community. Thus, trading with an enemy, marriage-brocage contracts, and agreements in general restraint of marriage or trade, are instances of acts against public policy (see Egerton v. Brownlow (1853) 4 H.L.C. 1). However, “you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which, more than another, public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting” (per Jessel M.R., Printing, etc., Co. v. Sampson (1875) L.R. 19 Eq. at p. 465. See also Fender v. Mi8ldma [1937] 3 All E. R. 402).
It is contrary to public policy to disclose in evidence the source of information given to the police, but not to journalists. See also CROWN PRIVILEGE; ILLEGAL; RESTRICTIVE TRADE PRACTICES.

**puisne.** [Later born, or younger.] A puisne judge means a judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, and the President of the Probate Division. The puisne judges are styled “Justices of the High Court” (Judicature Act, 1925, s. 2).

**Q**

**quarter sessions.** A court of record held before two or more justices of the peace as often as necessary, and at least four times a year (except London), for execution of the authority given them by the commission of the peace and certain statutes. Their jurisdiction was limited in cases of serious crime in favour of the assizes by the Quarter Sessions Act, 1842. Quarter Sessions of a borough are held before a Recorder. The chairman of quarter sessions must be legally qualified. Quarter sessions also have an appellate jurisdiction in regard to Magistrates Courts. Appeals from quarter sessions are by way of Case Stated to the High Court, where they are heard by a Divisional Court of the Queen’s Bench Division (Ord. 59, rr. 29-33). See the Criminal Justice Administration Act, 1962.

**quash.** To discharge or set aside, e.g., a wrongful conviction.

**quasi-contract.** The term is an abbreviation of the obligatio quasi ex contractu of Roman law. It is an obligation not created by, but similar to that created by contract, and is independent of the consent of the person bound. Thus, in Roman Law, if a person left his property without anyone to look after it, a stranger might undertake the care of it, and had a right of action against the owner for his expenses (actio negotiorum gestorum). Compare salvage (q.v.) in English Law.
The basis of the action for money had and received is thought to be rooted in quasi-contract on the footing of an implied promise to repay (see per Lord Sumner in Sinclair v. Brougham [1914] A.C. 398). The other view is that in the action for money had and received liability is based on unjust benefit or enrichment; i.e., that action is applicable wherever the defendant has received money which, in justice and equity, belongs to the plaintiff under circumstances which render the receipt of it by the defendant a receipt to the use of the plaintiff. But Lord Porter in Nelson v. Larholt [1951] A.C. at pp. 513-514 said that, as yet, the doctrine of unjust enrichment forms no part of English Law. But perhaps an implied contract to repay should be found in favour of the plaintiff where the defendant has been improperly enriched at his expense (Sir C.K. Allen). But the rationale of quasi-contract is still undetermined (Cheshire and Fifoot).

**quasi-judicial.** Executive powers or functions which involve the exercise of a discretion and the making of a decision in a judicial manner; as e.g., where a Minister makes an order after consideration of the findings of an inquiry which involves the hearing of evidence. See NATURAL JUSTICE.

**qui facit per alium facit per se.** [He who acts through another is deemed to act in person.] A principal is liable for the acts of his agents.

**qui haeret in litera haeret in cortice.** [He who sticks in the letter sticks in the bark.] i.e., he does not get at the substance or the meaning.

**qui jure suo utitur neminem laedit.** [He who exercises his legal right inflicts upon no one any injury.]

**qui jussu judicis aliquod fecerit non videtur dolo malo fecisse quia parere necesse est.** [He who does anything by command of a judge will not be supposed to have acted from an improper motive; because here is an obligation to obey.]
**qui omne dicit nihil excludit.** [He who says everything excludes noting.]  
**qui per alium facit, per seipsum facere videtur.** [He who does anything by another is deemed to have done it himself.]  
**qui prior est tempore potior est jure.** [He who is first in time has the strongest claim in law.]  
**qui sentit commodum sentire debet et onus; et e contra.** [He who enjoys the benefit ought also to bear the burden; and vice versa.]

**qui tacet consentire videtur.** [He who is silent is deemed to consent.] A party’s silence will render statements made in his presence evidence against him of their truth, when he is reasonably called on to reply; e.g., A said to B: “You know you always promised to marry me, and now you don’t keep your word.” B kept silent. Held, this was admissible in evidence to prove the promise of marriage (Bessela v. Stern (1887) 2 C.P.D. 265). In criminal law, the refusal by a person charged with an offence to make a statement or disclose his defence is not to be deemed a confession. See R. v. Leckey [1944] K. B. 80.

**qui tam pro domino rege quam pro si ipso in hac parte sequitur.** [Who sues on behalf of our Lord the King as well as for himself.] An action brought by an informer. See PENAL ACTION.  
**quivult decipi decipiatur.** [If a man wants to be deceived, then let him be deceived.]  
**quia emptores.** [Because purchasers]. The statute 18 Edw. 1, c. 1- the statute of Westminster III-which commences with these words. It enacted that every freeman should be at liberty to sell his lands, but that the purchaser should hold them of the feoffor’s lord and not of the feoffor. The statute therefore abolished subinfeudation (q.v.), and made the future creation of manors, etc., impossible.  
**quia timet.** [Because he fears.] A quia timet action is one by which a person may obtain an injunction to prevent or restrain some threatened act being done which, if done, would cause him substantial damage, and for which money would be no adequate or sufficient remedy; e.g., obstruction of ancient lights (Ord. 50, r.6).
quiequiv plantatur solo, solo cedit. [Whatever is affixed to the soil belong to the soil.]

quicquid solvitur, solvitur secundum modum solventis; quicquid recipitur, recipitur secundum modum recipientis. [Whatever is paid, is paid according to the intention or manner of the party paying; whatever is received, is received according to the intention or manner of the party receiving]

quid pro quo. [Something for something.] Consideration (q.v.).

quiet enjoyment. The right of a grantee of property (and of any person deriving title from him) to enter upon and remain in enjoyment of the property without any lawful interruption or disturbance by or on behalf of the person conveying the property to him, or by, through, or under any person through whom the person conveying derives title, otherwise than by purchase for value (Law of Property Act, 1925, Sched. II, Part I). See COVENANTS FOR TITLE.

quietare. To quit, discharge or save harmless.

quietus. A discharge granted by the Crown or its officer to a person indebted to the Crown; e.g., an accountant or sheriff.

quietus redditus. [Quit rent.] See RENT.

quibet potest renunciare juri prose introducto. [Every man is entitled to renounce a right introduced in his favour.]

quo ligatur, eo dissolvitur. [Whatsoever binds can also release.]

quo minus. [By which the less.] The initial words of the writ by means of which the Court of Exchequer obtained its extended jurisdiction. It permitted the plaintiff to plead that he was debtor of the King, and by reason of the cause of action pleaded he had become less able to pay his fictitious debt to the King.

quo warranto. [By what authority.] A high prerogative writ by the Crown against one who claimed or usurped any office, franchise or liberty, to inquire by what authority he supported his claim. It lay also in cases of non-user, or mis-user, of a franchise, or where any public trust was executed without authority. The writ was supplanted by the “information in the nature of a writ of quo warranto,” which could be brought with the leave of the court, at the relation of a private person. It was a civil proceeding (Judicature Act, 1925s. 48). These informations were abolished by the Administration
of Justice (Miscellaneous Provisions) Act, 1938, s. 9, and Proceedings by way of injunction substituted (Ord. 59, r. 11).

*quoad hoc.* [Regarding this]

*quod ab initio non valet, in tractu temporis non convalescit.* [That which is bad from the beginning does not improve by length of time]

*quod aedificatur in area legata cedit legato.* [That which is built on ground that is devise d passes to the devisee.]

*quod contra legam fit, pro infecto habetur.* [What is done contrary to law is deemed not to have been done at all.]

*quod fieri non debet, factum valet.* [A thing which ought not to have been done may nevertheless be perfectly valid when it is done.]

*quod non apparet non est.* [That which does not appear does not exist.]

*quod nullius est, est domini regis.* [That which is the property of nobody, belongs to our Lord the King.]

*quod per me non possum, nec per alium.* [What I cannot do in person, I cannot do by proxy.]

*quod prius est verius; et quod prius est tempore potius est jure.* [What is first is truer; and what is first in time is better in law.]

*quod semel meum est amplius meum esse non potest.* [What is once mine cannot be more fully mine.]

*quod semel placuit in electione, amplius displicere non potest.* [Where election is once made it cannot be revoked.]

*quorum.* [Of whom.] The minimum number of persons which constitutes a valid formal meeting.

*quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba expressa fienda est.* [When in the words there is no ambiguity then no interpretation contrary to the actual words is to be adopted.]

*quousque.* [Until.] When a copyhold tenant died intestate his heir was bound to come to the lord of the manor for admittance within a certain time and pay the fine due on
admittance. If he did not appear the lord might seize the land “quousque” (i.e., until he did appear) and enjoy the rents and profits in the meantime.

**R**

**R.: Reg., the Queen; or R.: Rex, the King.**

**Rape.** (1) Divisions of the county of Sussex, viz., Chichester, Arundel, Bramber, Lewes, Pevensey and Hastings. They appear to have been military governments in early Norman times. (2) The act of having carnal knowledge of a woman against her will, or by permission extorted by force, fear of immediate bodily harm, or fraud. Rape is a felony, punishable with imprisonment for life. Sexual Offences Act, 1956, s. 1. There must be proof of penetration (ibid., s. 44). In cases of attempted rape, the court may pass a sentence of imprisonment of not more than seven years (ibid., s. 37, Sched. 2, Pt. 1).

**Ratification.** The act of adopting a contract, or other transaction, by a person who was not bound by it originally; e.g., because it was entered into by an un-authorised agent. Ratification cannot take place where the party who professes to ratify a transaction was not in existence when it took place (Kelner v. Baxter [1866] L.R. 2 C.P. 174), nor unless the agent manifested the intention to contract on behalf of the principal at the time (Keighley, Maxted & Co. v. Durant [1901] A.C. 240). See PRINCIPAL.

Ratification of a treaty is a formal ceremony whereby some time after a treaty has been signed, solemn confirmations of it are exchanged by the contracting parties. No treaty is, normally, binding without ratification.

**Ratio decidendi.** [The reason (or ground) of a judicial decision.] It is the ratio decidendi of a case which makes the decision a binding precedent for the future. However, the ground of a decision is the material facts of the case, so that if a similar
or comparable set of facts come before the court again, so that the new case is on “all fours” with an earlier case, the court will follow and apply the decision in the earlier case.

The reason for the decision given in the earlier case is to be found in the judgment, which becomes a principle of law to be applied in future cases. But there is room for argument in a later case what the decisive facts in an earlier case really were, and what the true reason for the decision was: what the judge actually said in his judgment seems not to be regarded as conclusive. There may be more than one ratio decidendi of a case, which must all be considered. The House of Lords might regard a previous ratio as not binding where it was obscure or too wide, or where the decision itself was “out of line” (per Lord Reid in Scruttons v. midland Silicones [1962] 2 W.L.R. 186).

**reception.** A remedy by act of the party which may be resorted to when a man has deprive anther of his goods, or wrongfully detains his wife, child or servant: then the person injured may lawfully claim and retake them, but not so as to cause a breach of the peace.

**receiver.** (1) A person appointed by the court on an interlocutory application, to receive the rents and profits of real estate, or to get in personal property affected by proceedings in lieu of the person then having the control of the property, to protect the property until the right of the parties have been ascertained. In an action for the dissolution of a partnership a receiver is frequently appointed to realise the partnership assets (See Ord. 81, r.10). A receiver is an officer of the court and generally has to give security for the due performance of his duties. The appointment of a receiver by the court is discretionary (Ord. 50, rr. 16-22).

(2) In bankruptcy the official receiver may be appointed interim receiver, at any time after the presentation of the petition if that course be necessary for the preservation of the estate, and it is his duty to act as interim receiver after adjudication until a trustee is appointed (Bankruptcy Act, 1914, s. 8, 74).
(3) A mortgagee has the power, when the mortgage money has become due, to appoint a receiver (ss. 101, 109, Law of Property Act, 1925).

(4) A receiver by way of equitable execution is appointed by the court to enable a judgment creditor to obtain payment of his debt, when the debtor is in possession of property, or has an interest in property which cannot be reached by ordinary process of execution (Ord. 50, r. 17A).

(5) A person authorized by the Court of Protection (q.v.) to manage the affairs of a person of unsound mind not so found by inquiry.

**recitals.** Statements introduced to explain or lead up to the operative part of an instrument. They are generally divided into narrative recitals, which set forth the facts on which the instrument is based; and introductory recitals, which explain the motive for the operative part. A recital commences with “Whereas.”

**record.** (1) An authentic memorial preserved by a court or the legislature. (2) Formerly the official statement of the writ and pleadings of the use of the judge in a common law action. See PUBLIC RECORDS.

**recorder.** A barrister, of five years’ standing at the least, appointed by the Crown under the Municipal Corporations Act, 1882, to act as a justice of the peace and sole judge in a borough court of quarter sessions.

The Recorder of the City of London is a commissioner of the Central Criminal Court. He is appointed by the Corporation, but he cannot perform any judicial functions unless the Crown also appoints.

**recovery.** (1) Proceedings for the recovery of land from a person wrongfully in possession of it, are taken either in the High Court of Justice or in the county court, or before justices. In the High Court the proceedings are a substitute for the old action of ejectment (q.v.).
A common recovery was a mode of barring estates tail. It was a judgment in a collusive suit brought by a friendly plaintiff or “demandant” against the tenant in tail. As a first step the tenant in tail conveyed his life estate to the “tenant to the praecipe” to allow of the writ of praecipe being served upon him. The tenant to the praecipe then vouched (i.e., called on) the tenant in tail to warranty, who in turn vouched the “common vouchee” (the crier of the court) on the fiction that the land had been conveyed by the common vouchee to him with warranty of title. The common vouchee admitted the fiction and craved leave to “imparl” with the tenant in tail (i.e., confer with him out of court). He remained out of court and judgment was given against him by default, to the effect that the land belonged to the plaintiff and that the common vouchee must give land of equal value to the tenant to the praecipe. The common vouchee being a man of straw, no land was forthcoming, but the land of the tenant in tail went to the plaintiff under the judgment, freed from the estate tail and the remainders and reversions expectant on it, and then the plaintiff conveyed it back to him in fee simple. Common recoveries were abolished by the Fines and Recoveries Act, 1833, which substituted a simple disentailing assurance.

rectification. The correction of an error in a register or instrument; e.g., a conveyance or settlement, on the ground of mutual mistake; e.g., a clerical error, or an error in draftsman ship. The court may, in such a case, at its discretion, allow the instrument to be rectified. The court, however, will not allow rectification merely to allow a tax benefit to be obtained by using a different form of words in a voluntary settlement from those originally employed (Van der Linde v. Van der Linde [1947] Ch. 306). an action may by brought in the chancery division for rectification (judicature act,1925,s. 56); but every division can give effect to a claim for rectification in any action before it.

recto de dote unde nihil habet. A writ which lay for a widow who had received no part of her dower.
**redemption.** The paying off of a mortgage debt or charge upon property whereby the equitable interest and legal estate merge: the “buying back” of the property. An action for redemption is one brought by the mortgagor to compel the mortgagee to reconvey the property on payment of the debt and interest. See EQUITY OF REDEMPTION.

**reference.** The decision of a question by a referee (q.v.). See RERERE.

**registrar.** An officer responsible for keeping a register; e.g., an officer of the Chancery Division responsible for making the necessary entries in the records, and drawing up orders, etc. The Registrars in Bankruptcy hear the parties on a Bankruptcy Petition and make Receiving Orders.

**re-hearing.** The re-arguing of a cause or matter which has been already adjudicated upon. Every appeal to the Court of Appeal is by way of re-hearing, and hence the court may receive fresh evidence i.e., normally if not previously available, and review the whole case (Ord. 58, r. 1). But a re-hearing does not mean that the case is tried all over again: an appeal is normally taken up with legal argument. The Criminal Appeal Act, 1907, s. 9, empowers the Court of Criminal Appeal to treat an appeal as a re-hearing to such extent as they think fit; but evidence that was not given at the trial is not commonly received.

**relevant.** A fact so connected, directly or indirectly, with a fact in issue in an action or other proceeding that it tends to prove or disprove the fact in issue. Any two facts so related to each other that according to the common course of events one either taken by itself or in connection with other facts proves or renders probable the past, present or future existence or non-existence of the other (Stephen). Evidence must be relevant to be admissible.

**remand.** To adjourn a hearing to a future date, and to order that the defendant, unless admitted to bail, be kept in custody in the meantime. A remand centre is a place for
the detention of persons not less than fourteen but under twenty-one who are remanded or committed in custody for trial or sentence (Criminal justice Act, 1948, s. 48 (1)). A remand home is a place maintained by a local authority to which a child or young person guilty of an offence punishable by imprisonment may be committed (ibid., s. 49). A child under twelve may be committed to a special reception centre in lieu (Children and Young Persons (Amendment) Act 1952). See The Children and Young Persons Act, 1956.

**remedy.** The means by which the violation of a right is prevented, redressed, or compensated. Remedies are of four kinds: (1) by act of the party injured, the principal of which are defence, recaption, distress, entry, abatement and seizure, (2) by operation of law, as in the case of retainer and remitter; (3) by agreement between the parties, e.g., buy accord and satisfaction, and arbitration; and (4) by judicial process; e.g., action or suit.

**remembrancers.** The three officials of the Exchequer known as the Queen’s Remembrancer (q.v.), the Lord Treasurer’s Remembrancer, and the Remembrancer of the First Fruits. The Remembrancer of the City of London represents the Corporation before parliamentary committees; he accompanies the sheriffs when they wait on the Sovereign in connection with any address from the Corporation; and he is bound to attend all Courts of Aldermen and Common Council when required.

**remission.** (1) reference of a case by a higher court to a lower; e.g., by the High Court to the county court. (2) The forgiveness of a debt. (3) The pardon of an offender by the remission of his sentence of imprisonment.

**rent.** A periodical payment due from a tenant of land or other corporeal hereditament to the owner or lord which is recoverable by distraint in the event of non-payment. It is usually payable in money but it may be reserved in kind. A pepper-corn rent is a nominal rent which serves as an acknowledgment of the tenancy. See DISTRESS.
Rent service is always incident to tenure; it is that which is due when one man holds land of another by fealty (or any other service) and rent. It is called a rent service because it has some corporeal service annexed unto it, which at least is fealty (Co. Litt. 142A); but at the present day fealty is never exacted.

Quit rents were rent due usually form the tenants of manors, in lieu and in discharge of services. If a rent is severed from the reversion (as where either is assigned without the other) it becomes a rent in gross. A rack-rent is a rent of the full annual value of the land, or near it. See RACK-RENT.

When land is leased to a person on condition that he erects certain buildings on it, the rent reserved (which is small in comparison with the rent of the land when built on) is called the ground-rent.

**renunciation.** A disclaimer. A document by which a person appointed by a testator as his executor, or a person who is entitled to take out letters of administration to the effects of an intestate in priority to other persons, renounces or gives up his right to take out probate or letters of administration; the document is filed in the registry.

**repeal.** The abrogation of a statute or part of a statute by a subsequent statute. It may be either express, i.e., specially enacted, or it may be implied, i.e., the necessary result of the subsequent enactment. The repeal of a repealing enactment does not revive the enactment originally repealed (see the Interpretation Act, 1889, ss. 11, 38). See STATUTE LAW REVISION ACTS.

**replication; reply.** If the plaintiff desires to deliver a reply, he must deliver it within fourteen days from the service of the defence (Ord. 18). If no reply is served there is implied joinder of issue on the defence (Ord. 18, r. 14 (1). See PLEADINGS.

**representative.** A person who takes the place of another. The executor or administrator of a deceased person is called his personal representative, because he
represents him in respect of his personal estate. The personal representative is also the real representative where there is realty. See REAL REPRESENTATIVE.

_reprisal._ (1) A recaption (q.v.). (2) Every species of means, short of war, employed by one State to procure redress for an injury committed by another State. It includes embargo and retorsion (q.v.).

_repugnant._ Contrary to, or inconsistent with.

_res._ [Things.]

_res accessoria sequitur rem principalem._ [Accessory things follow principal things.]

_res furtivae._ [Stolen goods.]

_res gestae._ The facts surrounding or accompanying a transaction which is the subject of legal proceedings; or, all facts so connected with a fact in issue as to introduce it, explain its nature, or form in connection with it one continuous transaction. Evidence of words used by a person may be admissible on the ground that they form part of the res gestae, which might otherwise be in-admissible as hearsay.

_res integra._ A point, governed neither by any decision nor by any rule of law, which must be decided upon principle.

_res ipsa loquitur._ [The thing speaks for itself.] The maxim applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant, that reasonable jury could find without further evidence that it was so caused (see Scott v. London and St. Katherine’s Docks Co. (1865) 3 H. & C. 596). For example, in Byrne v. Boadle (1863) 2 H. & C. 722, a barrel of flour rolled out of an open doorway on the upper floor of the defendant’s war house and fell upon the plaintiff, a passer-by in the street below. It was held that this of itself was sufficient evidence of negligence to go to a jury.
res judicata pro veritate accipitur. [A thing adjudicated is received as the truth.] A judicial decision is conclusive until reversed, and its verity cannot be contradicted. Res judicata presupposes that there are two opposing parties, that there is a definite issue between them, that there is a tribunal competent to decide the issue, and that within its competence, the tribunal has done so. Once a matter or issue between parties has been litigated and decided, it cannot be raised again between the same parties, but other parties are not so bound.

res nova. A matter not yet decided.

res nullius. A thing which has no owner. See BONA VACANTIA.

res sua nemini servit. [no one can have an easement over his own property]

rescission. Abrogation or revocation, particularly of a contract. In a sale of land there is usually an express condition of sale under which, in case the purchaser makes and persists in any objection or requisition which the vendor is unable or unwilling to comply with, the vendor may by notice in writing rescind the sale, and return the deposit to the purchaser and so escape liability to pay damages for breach of contract. If a party is entitled to rescind a contract owing to a misrepresentation having been made, he must notify the other party of his intention by pleading invalidity as a defence to proceedings to enforce the contract, or by bringing a suit for having the contract judicially set aside. Re-scission is only allowed where restitution is possible.

reservation. A clause of a deed whereby the feoffor, donor, lessor, grantor, etc., doth reserve some new thing to himself out of that which he granted before. And this doth most commonly and properly succeed the tenendum (Sheppard’s Touchstone). The commonest instance of a reservation is the rent in an ordinary lease. See DEED.

residue. That which remains of a deceased person’s estate after payment of debts, funeral and testamentary expenses, legacies and annuities. Where a testator does not effectually dispose of the residue of his property he dies intestate as to it; i.e., if a share of residue lapses, it does not fall into residue, but goes to the next-of-kin.
Residue is ascertained when the administration of the deceased’s estate is so far completed that the nature and value of the residue can be determined. A personal representative who has completed administration, holds the residue on trust for residuary legatees or next-of-kin; he ceases to be a personal representative and becomes a trustee (attenborough v. Solomon [1913] A.C. 76).

**respite.** To discharge or dispense with.

**restitution of conjugal rights.** Where on of two married persons has without lawful cause withdrawn from living with the other, the latter may present a petition to the High Court in the Probate, Divorce and Admiralty Division praying restitution of conjugal rights, on which the court will, in a proper case, make a decree for restitution of conjugal rights. The decree is not enforceable by attachment (Matrimonial Causes Act, 1950, s. 15). Where a decree is made on the application of the wife, the court may order payment of alimony (q.v.) to the wife (ibid., s. 22). See CONJUGAL RIGHTS.

**restraint of marriage.** A contract, or disposition, the object of which is to restrain a persons from marrying at all, or not to marry anyone except a specific person, is void as against public policy.

**resulting trust.** An implied trust where the beneficial interest in property comes back, or results, to the person (or his representatives) who transferred the property to the trustee or provide the means of obtaining it. The chief kinds are (1) Where the expressed trusts do not exhaust the whole beneficial interest: but a resulting trust in the case of a voluntary conveyance is not implied for the grantor merely because the property is not expressed to be conveyed for the use or benefit of the grantee (Law of Property Act, 1925, s. 60 (3) ). (2) where on a purchase property is conveyed into the name of someone other than the purchaser, there is a resulting trust in favour of he who advances the purchase money: but not where it would defeat the policy of the law, or where there is a presumption of advancement. (3) In cases of joint purchases
or mortgages, on the death of one of the persons advancing a part of the money, there is often a resulting trust in favour of his representative. (4) In case of mutual wills.

**retail.** The sale of goods in small quantities to the public, as in a shop. The wholesaler sells to the retailer.

**retainer.** (1) The right of the executor or administrator of a deceased person to retain out of the assets sufficient to pay any debt due to him from the deceased in priority to the other creditors whose debts are of equal degree. A debt, however, which is preferred under the Bankruptcy Act, 1914, s. 33 (such as one year’s income tax) is of higher degree than a non-preferred debt, and the executor cannot therefore retain his own non-preferred debt as against the Crown’s preferred debt (Att. –Gen. v. Jackson [1932] A.C. 365). Where the deceased died before 1926, the right of retainer could only be exercised out of legal assets, but in the case of deaths after 1925, the right extends to all assets of the deceased (Administration of Estates Act, 1925, s. 34 (2)). (2) The engagement of a barrister or solicitor to take or defend proceedings, or to advise or otherwise act for the client.

**retraction.** A withdrawal of a renunciation (q.v.).

**return.** A report, thus, the sheriff executing a writ of execution has to report to the court what he has done in pursuance of it. A writ is said to be returnable at a certain time when the return must be made by that time.

Every company formed under the Companies Acts, and having a share capital, is bound to send in an annual return to the Registrar of Companies, giving the address of its registered office (or where registers are kept), a list of its shareholders, and a summary of shares issued, calls paid, directors, charges secured on the company’s property, etc., and annexed thereto (except in certain cases of private companies) a certified copy of the balance sheet and auditors report (Companies Act, 1948, ss. 124,
An annual return has also to be made by a company not having a share capital (ibid., s. 125).

**reversal.** The setting aside of a judgment on appeal.

**revocation.** Recalling, revoking or cancelling.

1. Revocation by act of the party is an intentional or voluntary revocation; e.g., of authorities and powers of attorney and wills (Wills Act, 1837, s. 20).

2. A revocation in law is produced by a rule of law, irrespective of the intention of the parties. Thus, a power of attorney, or the authority of an agent, is in general revoked by the death of the principal.

3. By an order of the court; e.g., when a grant of probate or letters of administration has been improperly obtained, it may be revoked by the court at the instance of a person interested.

4. In the law of contract, an offer may be revoked at any time before acceptance, but the revocation must be communicated to the offeree to be operative (Byrne v. Nan Tienhoven [1880] 5 C.P.D. 344).

**rex non potest peccare.** [The King can do no wrong.]

**rex nunquam moritur.** [The King never dies.]

**rex quod injustum est facere non potest.** [The King cannot do what is unjust.]

**right.** An interest recognised and protected by the law, respect for which is a duty, and disregard of which is a wrong (salmond). A capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others (Holland).

A right involves (1) a person invested with the right, or entitled; (2) a person or persons on whom that right imposes a correlative duty or obligation; (3) an act or forbearance which is the subject-matter of the right; (4) an object, that is a person or thing to which the right has reference; and (5) a title or reason for the right becoming vested in the owner. Rights are perfect and imperfect; positive and negative; real and
personal; proprietary and personal; in re propria and in re aliena; principal and accessory; and legal and equitable (Salmond).

**Riot.** There are five necessary elements of a riot: (1) Number of persons, three at least; (2) common purpose; (3) execution or inception of the common purpose; (4) an intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose; (5) force or violence not merely used in demolishing, but displayed in such a manner as to alarm at least one person of reasonable firmness and courage (per Phillimore J., Field v. Receiver of Metropolitan Police [1907] 2 K.B. 859). “Appear to alarm” may be enough. Riot is a common law misdemeanor.

Where twelve or more persons are committing a riot, it is the duty, under the Riot Act, 1714, of the mayor, sheriff, and certain other officers to make a proclamation in the Queen’s name, commanding them to disperse; and every person who obstructs the making of the proclamation, or continues to riot for one hour afterwards is guilty of felony.

Riotous damage or demolition of property is an offence under the Malicious Damage Act, 1861. See ROUT; UNLAWFUL ASSEMBLY.

**Robbery.** The taking and carrying away with violence or with threats of injury of a thing which is on the body or in the immediate presence of a person. See s. 23, Larceny Act, 1916.

**Rout.** An unlawful assembly which has made some motion towards the execution of the common purpose of the persons assembled. It is, therefore, intermediate between an unlawful assembly and a riot (q.v.). It is a common law misdemeanor.

**Rule.** (1) A regulation made by a court of justice or a public office with reference to the conduct of business therein. Rules made under the authority of an Act of Parliament have statutory effect. Rules of court are made by the judges under the
Judicature Acts for the regulation of practice and procedure. (2) An order or direction made by a court of justice in an action or other proceeding, A rule is either – (i) absolute in the first instance, or (ii) nisi, i.e., calling upon the opposite party to show cause why the rule applied for should not be granted. If no sufficient cause is shown, the rule is made absolute; otherwise it is discharged. (3) A principle of the law; e.g., the rule against perpetuities, or the rule in Howe v. Lord Dartmouth.

**rule of law.** The doctrine of English law expounded by Dicey, in Law of the Constitution, that all men are equal before the law, whether they be officials or not (except the Queen), so that the acts of officials in carrying out the behests of the executive government are cognisable by the ordinary courts and judged by the ordinary law, as including any special powers, privileges or exemptions attributed to the Crown by prerogative or statute.

So far as offences are concerned, an offender will not be punished except for a breach of the ordinary law, and in the ordinary courts: there is here an absence of the exercise of arbitrary power. Further, the fundamental rights of the citizen; the freedom of the person, freedom of speech, and freedom of meeting or association, are rooted in the ordinary law, and not upon any special “constitutional guarantees.”