

BLACK'S
LAW
DICTIONARY

EIGHTH EDITION

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A.

a.1. (usu. cap. & often ital.) A hypothetical person <A deeds Blackacre to B>.2. [Latin] From; by; in; on; of; at. 3.[Law Latin] With. 4.[Law French] Of; at; to; for; in; with. 5.Securities. A letter used in a newspaper stock-transaction table to indicate that cash was paid during the year in addition to regular dividends. 6.Securities. A letter used in a newspaper mutual-fund transaction table to indicate a yield that may include capital gains and losses as well as current interest. 7. (cap.) Securities. A letter used in a newspaper corporate earnings report to identify the American Stock Exchange as the primary market of a firm's common stock. 8. (cap.) Securities. An above-average grade given to a debt obligation by a rating agency. • The grades, as ranked by Standard & Poor's, range from AAA (highest) down to CCC. The equivalent standards from Moody's are Aaa, Aa, A, Baa, and so on down to C. 9.Marine insurance. A rating assigned in Lloyd's Register of Shipping to ships considered to be in first-class condition. 10.abbr.ADVERSUS. 11.(cap.) Hist. A scarlet letter worn as punishment by a person convicted of adultery. 12.Roman law. An abbreviation for absolvo written on wooden tablets by criminal-court judges to indicate a vote for acquittal. 13.Roman law. An abbreviation for antiquo (“for the old law”) written on wooden tablets by the participants in a popular assembly to indicate a vote against a proposed bill.

A

A.abbr.ATLANTIC REPORTER.

A. 2D

A.2d.abbr.See ATLANTIC REPORTER.

AAA

AAA.abbr.1.AMERICAN ARBITRATION ASSOCIATION. 2.AMERICAN ACCOUNTING ASSOCIATION . 3.AMERICAN ACADEMY OF ACTUARIES. 4.AGRICULTURAL ADJUSTMENT ACT . 5. See accumu-lated-adjustments account under ACCOUNT.

AAC

AAC.abbr.ANNO ANTE CHRISTUM.

AACN

AACN.abbr.ANNO ANTE CHRISTUM NATUM.

AALS

AALS.abbr.ASSOCIATION OF AMERICAN LAW SCHOOLS.

AARCC

AARCC.abbr. ALTERNATIVE AGRICULTURAL RESEARCH AND

COMMERCIALIZATION CORPO-RATION .

AAU

AAU.abbr. Amendment to allege use. See TRADEMARK-APPLICATION AMENDMENT.

A AVER ET TENER

a aver et tener (ay ay-v<<schwa>>r [or ah ah-v<<schwa>>r] et ten-<<schwa>>r). [Law French] To have and to hold. See HABENDUM CLAUSE.

AB

AB.abbr.See able-bodied seaman under SEAMAN.

ab,prep. [Latin] From; by; of.

ABA

ABA.abbr.1.AMERICAN BAR ASSOCIATION. 2.AMERICAN BANKERS ASSOCIATION.

ABACINATE

abacinate (<<schwa>>-bas-<<schwa>>-nayt), vb. To blind (a person) by placing a red-hot iron or metal plate in front of the eyes.

ABACTION

abaction (ab-ak-sh<<schwa>>n). See ABIGEATUS.

AB ACTIS

ab actis (ab ak-tis), n.[Latin “in relation to proceedings”] Roman law. An officer responsible for public records (acta), registers, journals, or minutes; a court clerk; a notary.

ABACTOR

abactor (ab-ak-t<<schwa>>r or -tor). See ABIGEUS.

AB AGENDO

ab agendo (ab <<schwa>>-jen-doh), adj.[Latin] Unable to act; incapacitated for business or transactions of any kind.

ABALIENATION

abalienation (ab-ayl-y<<schwa>>-nay-sh<<schwa>>n), n.[fr. Latin abalienare “to alienate”] Civil law. The transfer of an interest in or title to property; ALIENATION(2). • In Roman law, the term was abalienatio (“a perfect conveyance from one Roman citizen to another”), which was anglicized to abalienation. — abalienate,vb.

ABAMITA

abamita (<<schwa>>-bam-<<schwa>>-t<<schwa>>). [Latin] Civil law. A great-great-great-aunt.

ABANDONED APPLICATION

abandoned application. Patents & trademarks. An application removed from the U.S. Patent and Trademark Office docket of pending applications because the applicant (or the applicant's attorney or agent of record) filed an express notice of abandonment, failed to take appropriate action at some stage in the prosecution of a nonprovisional application within the time specified by the PTO rules (or because the statutory period expired for a provisional application), or failed to pay the issue fee. • Abandonment of a patent or trademark application does not automatically result in abandonment of the invention or the mark. Cf. ABANDONED INVENTION; ABANDONED MARK.

ABANDONED EXPERIMENT

abandoned experiment. Patents. An unsuccessful attempt to reduce an invention to practice. • Unless it is publicly known, an abandoned experiment does not qualify as prior art under § 102 of the Patent Act, so it does not bar future patents.

ABANDONED INVENTION

abandoned invention. See INVENTION.

ABANDONED MARK

abandoned mark. See abandoned trademark under TRADEMARK.

ABANDONED PROPERTY

abandoned property. See PROPERTY.

ABANDONED, SUPPRESSED, OR CONCEALED

abandoned, suppressed, or concealed, adj. Patents. Intentionally or accidentally hidden from public notice, not reduced to practice, or not patented. • Another person's earlier invention will not be considered prior art if the first inventor abandoned the field to others or is held to have lost the right to patent by suppressing or concealing the invention. But if the suppression or concealment occurred after the art became known to the public, then it still qualifies as prior art. See MPEP § 2138.03. [Cases: Patents 82. C.J.S. Patents §§ 114–118.]

ABANDONED TRADEMARK

abandoned trademark. See TRADEMARK.

ABANDONEE

abandonee (<<schwa>>-ban-d<<schwa>>-nee). One to whom property rights are relinquished; one to whom something is formally or legally abandoned.

ABANDONMENT

abandonment, n. 1. The relinquishing of a right or interest with the intention of never again claiming it. • In the context of contracts for the sale of land, courts sometimes use the term abandonment as if it were synonymous with rescission, but the two should be distinguished. An abandonment is merely one party's acceptance of the situation that a nonperforming party has caused. 2. Family law. The act of leaving a spouse or child willfully and without an intent to return. • Child abandonment is grounds for termination of parental rights. Spousal abandonment is grounds for divorce. Cf. DESERTION. [Cases: Divorce 37; Infants 157. C.J.S. Divorce §§ 20, 41.]

“The lines of distinction between abandonment and the many forms of child neglect are often not very clear so that failure to support or to care for a child may sometimes be characterized as abandonment and sometimes as neglect.” Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 20.6, at 895 (1988).

abandonment of minor children. See NONSUPPORT.

constructive abandonment. See constructive desertion under DESERTION.

malicious abandonment. 1. The desertion of a spouse without just cause. See criminal desertion under DESERTION. [Cases: Divorce 37. C.J.S. Divorce §§ 20, 41.] 2. See voluntary abandonment.

voluntary abandonment. 1. As a ground for divorce, a final departure without the consent of the other spouse, without sufficient reason, and without the intention to return. [Cases: Divorce 37. C.J.S. Divorce §§ 20, 41.] 2. In the law of adoption, a natural parent's willful act or course of conduct that implies a conscious disregard of or indifference to a child, as if no parental obligation existed. — Also termed malicious abandonment. [Cases: Adoption 7.4.]

3. Criminal law. RENUNCIATION(3). 4. Bankruptcy. A trustee's court-approved release of property that is burdensome or of inconsequential value to the estate, or the trustee's release of nonadministered property to the debtor when the case is closed. [Cases: Bankruptcy 3131–3137. C.J.S. Bankruptcy §§ 188–189.] 5. Contracts. RESCISSION(2). 6. Insurance. An insured's relinquishing of damaged or lost property to the insurer as a constructive total loss. Cf. SALVAGE(2). [Cases: Insurance 2236. C.J.S. Abatement and Revival §§ 135, 146, 148, 151–154.] 7. Trademarks. A mark owner's failure to maintain the mark's proper use in commerce or failure to maintain its distinctive character. • Abandonment is an affirmative defense to an action for trademark infringement. — Also termed nonuse. [Cases: Trade Regulation 70. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 217–218.] 8. Copyright. Hist. An affirmative defense to a copyright-infringement claim governed by pre-1989 law, based on the author's general publication of the work without a copyright notice. [Cases: Copyrights and Intellectual Property 50.1(4).] 9. Intellectual Property. The loss of an intellectual-property right, as by disuse, neglect of formalities, or failure to pay a required fee.

abandonment by operation of law. See constructive abandonment.

actual abandonment. 1. Patents. Intentional relinquishment of the right to patent protection, evidenced, for example, by more than mere inactivity or delay in filing the application. • Actual

abandonment may be express or implied, but every reasonable doubt about intent will be resolved in the inventor's favor. [Cases: Patents 82. C.J.S. Patents §§ 114–118.] 2.Trademarks. Intentional loss of trademark protection by discontinuing commercial use of the mark with the intention of not using it again. [Cases: Trade Regulation 70. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 217–218.]

constructive abandonment. 1.Patents. The closing of a patent-application prosecution by the U.S. Patent and Trademark Office when an applicant fails to respond to an office action within the time allowed, usu. six months, or fails to pay an issue fee. • If the delay was unintentional or unavoidable, the application may be revived. [Cases: Patents 107. C.J.S. Patents §§ 157–158.] 2.Patents. Abandonment of an invention by operation of law regardless of the inventor's intention, such as when the inventor forfeits the right to patent by selling or offering to sell the invention or by describing it in a publication more than a year before seeking patent protection. 35 USCA § 102. [Cases: Patents 80. C.J.S. Patents §§ 105–106, 108–111.] 3.Trademarks. An owner's loss of trademark protection, regardless of whether the mark is registered, by allowing the mark to lose its distinctiveness, such as by letting the name become a generic term for that type of goods, or by otherwise failing to maintain the mark's distinctive character. • For example, licensing the use of the mark without retaining control over how it is used would result in constructive abandonment. — Also termed abandonment by operation of law. [Cases: Trade Regulation 76. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 222–224.]

express abandonment.Patents. An applicant's intentional and clear termination of a patent prosecution. • An express abandonment must be made in a signed writing and received by the U.S. Patent and Trademark Office in time for the Office to act before the patent issues. Once an application is expressly abandoned, it cannot be revived, and the applicant cannot preclude the public from freely availing itself of the invention's benefits. Abandonment of a patent application does not result in abandonment of the invention. — Also termed formal abandonment. [Cases: Patents 107. C.J.S. Patents §§ 157–158.]

formal abandonment.See express abandonment.

implied abandonment.Patents. An inventor's failure to take steps to protect an invention, such as by failing to claim the invention when disclosed in a patent application or by permitting an application to be abandoned, esp. by failing to file an answer to an office action within the time allowed. [Cases: Patents 107. C.J.S. Patents §§ 157–158.]

ABANDONMENT OF CONTEST

abandonment of contest.Patents. The withdrawal by a party from an interference contest. • The abandonment of contest must be in writing. The contest is dissolved as to the abandoning party. [Cases: Patents 106(5).C.J.S. Patents § 166.]

ABANDUM

abandum (<<schwa>>-ban-d<<schwa>>m), n.[Law Latin] Hist. A thing that has been forfeited. — Also spelled abandun; abandonum.

AB ANTE<TT>

ab ante (ab an-tee), adv.[Latin] Hist. Before; beforehand; in advance. — Also termed ab antecedente.

AB ANTIQUO

ab antiquo (ab an-tI-kwoh), adv.[Law Latin] Hist. From ancient times; of old. — Also termed ab antiqua.

ABARNARE

abarnare (ab-ahr-nair-ee), vb.[Law Latin] Hist. To detect or disclose a secret crime; to bring to judgment.

ABATABLE NUISANCE

abatable nuisance. See NUISANCE.

ABATAMENTUM

abatamentum (<<schwa>>-bay-t<<schwa>>-men-t<<schwa>>m), n.[Law Latin] Hist. See ABATEMENT(5).

ABATARE

abatare (ab-<<schwa>>-tair-ee), vb.[Law Latin] Hist. To abate.

ABATEMENT

abatement (<<schwa>>-bayt-m<<schwa>>nt), n.1. The act of eliminating or nullifying <abatement of a nuis-ance> <abatement of a writ>. [C.J.S. Nuisances §§ 86–89.] 2. The suspension or defeat of a pending action for a reason unrelated to the merits of the claim <the defendant sought abatement of the suit because of misnomer>. See plea in abatement under PLEA. [Cases: Abatement and Revival 58.]

“Although the term ‘abatement’ is sometimes used loosely as a substitute for ‘stay of proceedings,’ the two may be distinguished on several grounds. For example, when grounds for abatement of an action exist, the abatement of the action is a matter of right, but a stay is granted in the court's discretion. And in proper circumstances a court may stay a proceeding pending the outcome of another proceeding although a strict plea in abatement could not be sustained.” 1 Am. Jur. 2d Abatement, Survival, and Revival § 3 (1994).

3. The act of lessening or moderating; diminution in amount or degree < abatement of the debt>.4.Wills & estates. The reduction of a legacy, general or specific, as a result of the estate's being insufficient to pay all debts and legacies <the abatement of legacies resulted from the estate's insolvency>. Cf. ADEPTION. [Cases: Wills 804–818.] 5.Archaic. The act of thrusting oneself tortiously into real estate after the owner dies and before the legal heir enters <abatement of freehold>. — Also termed (in sense 5) abatamentum. — abate,vb. — abat-able,adj.

ABATEMENT CLAUSE

abatement clause. A lease provision that releases the tenant from the rent obligation when an act of God precludes occupancy.

ABATER

abater (<<schwa>>-bay-t<<schwa>>r or -tor). 1. One who abates something. 2. A plea in abatement. See plea in abatement under PLEA.

ABATOR

abator (<<schwa>>-bay-t<<schwa>>r or -tor). 1. A person who eliminates a nuisance. See ABATEMENT(1). [Cases: Nuisance 20, 74.] 2. Hist. A person who tortiously intrudes on an heir's freehold before the heir takes possession. See ABATEMENT(5).

ABATUDA

abatuda (ab-<<schwa>>-t[y]oo-d<<schwa>>), n. [fr. Law Latin abatudus "debased"] Hist. A thing diminished, such as money reduced in value by clipping (moneta abatuda).

ABAVIA

abavia (<<schwa>>-bay-vee-<<schwa>>), n. [Latin] Civil law. A great-great-great-grandmother.

ABAVUNCULUS

abavunculus (ab-<<schwa>>-v<<schwa>>ng-ky<<schwa>>-l<<schwa>>s), n. [Latin] Civil law. A great-great-great-uncle. — Also termed avunculus maximus.

ABAVUS

abavus (ab-<<schwa>>-v<<schwa>>s), n. [Latin] Civil law. A great-great-grandfather.

ABBACY

abbacy (ab-<<schwa>>-see). Eccles. law. An abbot's jurisdiction or term of tenure.

ABBESS

abbess (ab-is). Eccles. law. A female spiritual superior of a convent. Cf. ABBOT.

ABBEY

abbey (ab-ee). Eccles. law. A monastery governed by an abbot, or a convent governed by an abbess.

ABBEY LAND

abbey land. (usu pl.) Hist. Real property held by an abbey in mortmain and therefore exempt from tithes. See MORTMAIN.

ABBOT

abbot (ab-<<schwa>>t). Eccles. law. A superior or governor of an abbey. Cf. ABBESS.

ABBREVIATED TERM SHEET

abbreviated term sheet. See TERM SHEET.

ABBREVIATIO PLACITORUM

Abbreviatio Placitorum (<<schwa>>-bree-vee-ay-shee-oh plas-i-tor-<<schwa>>m), n. [Law Latin “summary of the pleas”] Hist. An abstract of pleadings culled from the rolls of the Curia Regis, Parliament, and common-law courts from the 12th to 14th centuries, compiled in the 17th century, printed in 1811, and attributed variously to Arthur Agarde, Deputy Chamberlain of the Exchequer, and to other keepers of the records. Cf. YEAR BOOKS.

ABBREVIATOR

abbreviator. 1. One who abbreviates, abridges, or shortens. 2. Eccles. law. An officer in the court of Rome appointed as assistant to the vice-chancellor for drawing up the Pope's briefs and reducing petitions, when granted, into proper form to be converted into papal bulls.

ABBROACHMENT

abbroachment (<<schwa>>-brohch-m<<schwa>>nt), n. Hist. The act of forestalling the market by buying wholesale merchandise to sell at retail as the only vendor. — Also spelled abbrochment; abbrochement. — ab-broach, vb.

ABC TEST

ABC test. The rule that an employee is not entitled to unemployment insurance benefits if the employee (A) is free from the control of the employer, (B) works away from the employer's place of business, and (C) is engaged in an established trade. • The name derives from the A, B, and C commonly used in designating the three parts of the test. [Cases: Social Security and Public Welfare 293, 351, 385. C.J.S. Social Security and Public Welfare §§ 166–169, 186, 214–215.]

ABC TRANSACTION

ABC transaction. Oil & gas. A sale of a working interest from an owner (A) to an operator (B) in return for a cash payment and the right to another (usu. larger) payment when the well produces, followed by A's sale of the right to the production payment to a corporation (C), which pays A in cash borrowed from a lender on C's pledge of the production payment. • Thus A receives cash taxed at capital-gains rates, and B pays part of the purchase price with nontaxable production income. The tax advantages of this transaction were eliminated by the Tax Reform Act of 1969.

ABDICATION

abdication (ab-di-kay-sh<<schwa>>n), n. The act of renouncing or abandoning privileges or duties, esp. those connected with high office <Edward VIII's abdication of the Crown in 1936> <the court's abdication of its judicial responsibility>. — abdicate (ab-di-kayt), vb. — abdicable (ab-di-k<<schwa>>-b<<schwa>>l), adj. — abdicator (ab-di-kay-t<<schwa>>r), n.

ABDITORY

abditory (ab-di-tor-ee), n.[Law Latin abditorium “box, receptacle”] A repository used to hide and preserve goods or money. — Also termed abditorium (ab-di-tor-ee-*<<schwa>>*m).

ABDUCTION

abduction (ab-d*<<schwa>>*k-sh*<<schwa>>*n), n.1. The act of leading someone away by force or fraudulent persuasion. • Some jurisdictions have added various elements to this basic definition, such as that the abductor must have the intent to marry or defile the person, that the abductee must be a child, or that the abductor must intend to subject the abductee to concubinage or prostitution. 2.Archaic. The crime of taking away a female person, esp. one who is below a certain age (such as 16 or 18), without her consent by use of persuasion, fraud, or violence, for the purpose of marriage, prostitution, or illicit sex. [Cases: Criminal Law 45.10. C.J.S. Kidnapping §§ 5–6.] 3. Loosely, KIDNAPPING. See ENTICEMENT OF A CHILD. — abduct,vb. — abductor,n. — abductee,n.

“Abduction seems not to have been a crime at early common law, but found its way thereinto through an old English statute which defined the crime substantially as the taking of a woman against her will for lucre, and afterwards marrying her, or causing her to be married to another, or defiling her, or causing her to be defiled.” Justin Miller, *Handbook of Criminal Law* § 104, at 319 (1934).

ABEARANCE

abearance (*<<schwa>>*-bair-*<<schwa>>*nts), n. Archaic. Behavior; conduct.

“The other species of recognizance, with sureties, is for the good abearance, or good behaviour. This includes security for the peace ...” 4 William Blackstone, *Commentaries on the Laws of England* 253 (1769).

AB EPISTOLIS

ab epistolis (ab ee-pis-t*<<schwa>>*-lis), n.[Latin] Hist. An officer who maintained the correspondence (epistolae) for a superior; a secretary.

ABERCROMBIE<TT> CLASSIFICATION

Abercrombie classification.Trademarks. One of the four types of trade designation — whether by mark, name, or dress — as generic, descriptive, suggestive, and arbitrary or fanciful, in increasing order of distinctiveness. *Ab-ercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976). [Cases: Trade Regulation 12.]

ABERRANT BEHAVIOR

aberrant behavior (a-ber-*<<schwa>>*nt). A single act of unplanned or thoughtless criminal behavior. • Many courts have held that aberrant behavior justifies a downward departure — that is, a more lenient sentence — under the federal sentencing guidelines, based on a comment in the introduction to the Guidelines Manual to the effect that the guidelines do not deal with single acts of aberrant behavior. U.S. Sentencing Guidelines Manual ch. 1, pt. A, ¶ 4.

ABESSE

abesse (ab-es-ee), vb.[Law Latin] Roman & civil law. To be absent; to be away from a place where one is supposed to be (as before a court). Cf. ADESSE.

ABET

abet (<<schwa>>-bet), vb.1. To aid, encourage, or assist (someone), esp. in the commission of a crime <abet a known felon>.2. To support (a crime) by active assistance <abet a burglary>. See AID AND ABET. Cf. INCITE. [Cases: Criminal Law 59(5). C.J.S. Criminal Law §§ 133, 135, 998–999.] — abetment,n.

ABETTATOR

abettator (ab-<<schwa>>-tay-t<<schwa>>r), n.[Law Latin] Archaic. See ABETTOR.

ABETTOR

abettor. A person who aids, encourages, or assists in the commission of a crime. — Also spelled abetter. — Also termed (archaically) abettator. See principal in the second degree under PRINCIPAL; [Cases: Criminal Law 59. C.J.S. Criminal Law §§ 127, 998.]

AB EXTRA

ab extra (ab ek-str<<schwa>>), adv.[Latin] From outside; extra; beyond.

ABEYANCE

abeyance (<<schwa>>-bay-<<schwa>>nts), n.1. Temporary inactivity; suspension. 2.Property. A lapse in suc-cession during which no person is vested with title. — abeyant,adj.

“Abeyance, from the French bayer, to expect, is that which is in expectation, remembrance, and intendment of law. By a principle of law, in every land there is a fee simple in somebody, or else it is in abeyance; that is, though for the present it be in no man, yet it is in expectancy belonging to him that is next to enjoy the land.” 1 Richard Burn, A New Law Dictionary 4 (1792).

ABIATICUS

abiaticus (ab-ee-ay-t<<schwa>>-k<<schwa>>s), n.[Law Latin “descended from a grandfather”] Hist. A grandson in the male line; a son's son. — Also spelled aviaticus.

ABIDE

abide,vb.1. To tolerate or withstand <the widow found it difficult to abide the pain of losing her husband>.2. To obey <try to abide the doctor's order to quit smoking>.3. To await <the death-row prisoners abide execution>.4. To perform or execute (an order or judgment) <the trial court abided the appellate court's order>.5. To stay or dwell <the right to abide in any of the 50 states>.

ABIDE BY

abide by,vb. To act in accordance with or in conformity to.

AB IDENTITATE RATIONIS

ab identitate rationis (ab I-den-ti-tay-tee ray-shee-oh-nis or rash-ee-oh-nis). [Law Latin] Hist. By identity of reason; for the same reason.

ABIDING CONVICTION

abiding conviction.See CONVICTION.

ABIGEATUS

abigeatus (<<schwa>>-bij-ee-ay-t<<schwa>>s), n.[Latin] Roman & civil law. The act of stealing cattle by driving them away (abigere); cattle-rustling. • In the later civil law, the usual term for this was abaction. — Also termed abigeat.

ABIGEUS

abigeus (<<schwa>>-bij-ee-<<schwa>>s), n.[Latin] Roman & civil law. One who steals cattle, esp. in large numbers; a cattle-rustler. • This was known in the later civil law as an abactor. Pl. abigei.

“The stealing of a single horse or ox might make a man an abigeus, but it seems that the crime could not be committed on less than four pigs or ten sheep. They need not however be taken all together. In such a state of the law one would expect thefts of three pigs or eight sheep to become abnormally common.” 1 James Fitzjames Stephen, A History of the Criminal Law of England 27 (1883).

ABILITY

ability. The capacity to perform an act or service; esp., the power to carry out a legal act <ability to enter into a contract>.

present ability.The actual, immediate power to do something (esp. to commit a crime).

AB INCONVENIENTI

ab inconvenienti (ab in-k<<schwa>>n-vee-nee-en-tI), adv.[Law Latin] From hardship or inconvenience. See argumentum ab inconvenienti under ARGUMENTUM.

AB INITIO

ab initio (ab i-nish-ee-oh), adv.[Latin] From the beginning <the injunction was valid ab initio>. Cf. IN INITIO.

AB INTESTATO

ab intestato (ab in-tes-tay-toh), adv.[Latin] By intestacy <succession ab intestato is often treated as being ne-cessary because of the neglect or misfortune of the deceased proprietor>. Cf. EX TESTAMENTO.

AB INVITO

ab invito (ab in-vI-toh), adv.[Latin] By or from an unwilling party; against one's will <a transfer ab invito>. Cf. IN INVITUM.

AB IRATO

ab irato (ab I-ray-toh), adv.[Latin] By one who is angry. • This phrase usu. refers to a gift or devise made adversely to an heir's interests, out of anger. An action to set aside this type of conveyance was known at common law as an action ab irato.

ABISHERING

abishering. See MISKERING.

ABJUDGE

abjudge (ab-j<<schwa>>j), vb. Archaic. To take away or remove (something) by judicial decision. Cf. ADJUDGE.

“As a result of the trial a very solemn judgment is pronounced. The land is adjudged to the one party and his heirs, and abjudged (abiudicata) from the other party and his heirs for ever.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 63 (2d ed. 1899).

ABJUDICATIO

abjudicatio (ab-joo-di-kay-shee-oh), n.[Law Latin] The act of depriving a person of a thing by judicial decision.

ABJURATION

abjuration (ab-juu-ray-sh<<schwa>>n), n. A renouncing by oath.

abjuration of the realm. An oath taken to leave the realm forever.

“If a malefactor took refuge [in sanctuary] ... the coroner came and parleyed with the refugee, who had his choice between submitting to trial and abjuring the realm. If he chose the latter course, he hurried dressed in pilgrim's guise to the port that was assigned to him, and left England, being bound by his oath never to return. His lands escheated; his chattels were forfeited, and if he came back his fate was that of an outlaw.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 590 (2d ed. 1899).

oath of abjuration. English law. An oath renouncing all right of descendants of a pretender to the Crown.

ABJURE

abjure (ab-joor), vb. 1. To renounce formally or on oath <abjure one's citizenship>. 2. To avoid or abstain from <abjure one's civic duties>. — abjuratory (ab-joor-<<schwa>>-tor-ee), adj.

ABLATIVE FACT

ablative fact. See divestitive fact under FACT.

ABLE

able, adj. Legally competent and qualified <able to transfer title>.

ABLE-BODIED SEAMAN

able-bodied seaman. See SEAMAN.

ABLEGATE

ablegate (ab-l<<schwa>>-gayt), n. A papal envoy on a special mission, such as carrying a newly appointed cardinal's insignia of office.

ABLEISM

ableism. Prejudice against or disregard of disabled people's needs and rights; discrimination that unreasonably favors able-bodied persons. See DISCRIMINATION(1), (2). — ableist, adj.

ABLE SEAMAN

able seaman. See able-bodied seaman under SEAMAN.

ABLE TO WORK

able to work. Labor law. (Of a worker) released from medical care and capable of employment; esp., not qualified to receive unemployment benefits on grounds of illness or injury. [Cases: Social Security and Public Welfare 477–495. C.J.S. Social Security and Public Welfare §§ 255–258.]

ABLOCATION

ablocation (ab-loh-kay-sh<<schwa>>n). Archaic. The leasing of property for money. Cf. LOCATIO.

ABMATERTERA

abmatertera (ab-m<<schwa>>-t<<schwa>>r-t<<schwa>>r-<<schwa>>), n. [Latin] Civil law. A great-great-great-aunt. See MATERTERA MAXIMA.

ABNEPOS

abnepos (ab-nep-ahs or -ohs), n. [Latin] Civil law. A great-great-grandson; the grandson of a grandson or granddaughter.

ABNEPTIS

abneptis (ab-nep-tis), n. [Latin] Civil law. A great-great granddaughter; the granddaughter of a grandson or granddaughter.

ABNORMAL LAW

abnormal law. The law as it applies to persons who are under legal disabilities such as infancy,

alienage, insanity, criminality, and (formerly) coverture.

ABNORMALLY DANGEROUS ACTIVITY

abnormally dangerous activity. An undertaking that necessarily carries with it a significant risk of serious harm even if reasonable care is used, and for which the actor may face strict liability for any harm caused; esp., an activity (such as dynamiting) for which the actor is held strictly liable because the activity (1) involves the risk of serious harm to persons or property, (2) cannot be performed without this risk, regardless of the precautions taken, and (3) does not ordinarily occur in the community. • Under the Restatement (Second) of Torts, determining whether an activity is abnormally dangerous includes analyzing whether there is a high degree of risk of harm, whether any harm caused will be substantial, whether the exercise of reasonable care will eliminate the risk, whether the activity is a matter of common usage, whether the activity is appropriate to the place in which it occurs, and whether the activity's value to society outweighs its dangerousness. Restatement (Second) of Torts § 520 (1977). — Also, esp. formerly, termed extrahazardous activity; ultrahazardous activity. See strict liability under LIABILITY. [Cases: Negligence 305. C.J.S. Negligence §§ 176–179.]

ABODE

abode. A home; a fixed place of residence. See DOMICILE; PLACE OF ABODE.

ABOGADO

abogado (ah-boh-gah-doh), n. [Spanish] Spanish law. An advocate; a lawyer.

AB OLIM

ab olim (ab oh-lim), adj. [Law Latin] Of old.

ABOLISH

abolish, vb. To annul, eliminate, or destroy, esp. an ongoing practice or thing.

ABOLITION

abolition. 1. The act of abolishing. 2. The state of being annulled or abrogated. 3. (usu. cap.) The legal termination of slavery in the United States. [Cases: Slaves 24. C.J.S. Peonage §§ 3–5.] 4. Civil law. Withdrawal of a criminal accusation; a sovereign's remission of punishment for a crime. 5. Hist. Permission granted to the accuser in a criminal action to withdraw from its prosecution. See NOLLE PROSEQUI.

ABOMINABLE AND DETESTABLE CRIME AGAINST NATURE

abominable and detestable crime against nature. See SODOMY.

A BON DROIT

a bon droit (ay or a bawndrwah), adv. [Law French] With good reason; justly; rightfully.

ABORIGINAL COST

aboriginal cost. See COST(1).

ABORIGINAL TITLE

aboriginal title. See TITLE(2).

ABORTEE

aborte (<<schwa>>-bor-tee). A woman who undergoes an abortion. [Cases: Abortion and Birth Control 0.5.]

ABORTICIDE

aborticide. See ABORTIFACIENT.

ABORTIFACIENT

abortifacient (<<schwa>>-bor-t<<schwa>>-fay-sh<<schwa>>nt), n. A drug, article, or other thing designed or intended to produce an abortion. — Also (rarely) termed aborticide. — abortifacient,adj.

ABORTION

abortion,n.1. An artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus. • In *Roe v. Wade*, the Supreme Court first recognized a woman's right to choose to end her pregnancy as a privacy right stemming from the Due Process Clause of the 14th Amendment. 410 U.S. 113, 93 S.Ct. 705 (1973). Sixteen years later, in *Webster v. Reproductive Health Services*, the Court permitted states to limit this right by allowing them to enact legislation that (1) prohibits public facilities or employees from performing abortions, (2) prohibits the use of public funds for family planning that includes information on abortion, or (3) severely limits the right to an abortion after a fetus becomes viable — that is, could live independently of its mother. 492 U.S. 490, 109 S.Ct. 3040 (1989). In 1992, the Court held that (1) before viability, a woman has a fundamental right to choose to terminate her pregnancy, (2) a law that imposes an undue burden on the woman's right to choose before viability is unconstitutional, and (3) after viability, the state, in promoting its interest in potential human life, may regulate or prohibit abortion unless it is necessary to preserve the life or health of the mother. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 112 S.Ct. 2791 (1992). In 2000, the Court again considered abortion rights and reaffirmed *Casey* in holding the Nebraska law at issue unconstitutional because (1) it failed to provide an exception to preserve the health of the mother, and (2) it unduly burdened a woman's right to choose a late-term abortion, thereby unduly burdening her right to choose abortion itself. *Stenberg v. Carhart*, 530 U.S. 914, 120 S.Ct. 2597 (2000). — Formerly also termed procuring an abortion; criminal operation; criminal miscarriage; pro-curing miscarriage. [Cases: Abortion and Birth Control 0.5.] 2. The spontaneous expulsion of an embryo or fetus before viability; MISCARRIAGE. — abort,vb. — abortionist,n.

“The word ‘abortion,’ in the dictionary sense, means no more than the expulsion of a fetus before it is capable of living. In this sense it is a synonym of ‘miscarriage.’ With respect to human beings, however, it has long been used to refer to an intentionally induced miscarriage as

distinguished from one resulting naturally or by accident. There has been some tendency to use the word to mean a criminal miscarriage, and there would be distinct advantages in assigning this meaning to it; but there are so many references to lawful abortion or justification for abortion that it is necessary to speak of 'criminal abortion' or the 'crime of abortion' to emphasize the element of culpability." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 186–87 (3d ed. 1982).

“Modern legal historians dispute whether, and to what extent, abortion constituted a crime at English common law. One view finds that, at most, abortion was an ecclesiastical crime, and concludes that the common law allowed a woman and her abortionist to terminate a pregnancy at all stages of gestation without secular penalties. Another claims that all abortions are at least secular wrongs to the fetus and that only the problems of proving a causal relationship between some abortions and fetal death prevented the punishment of all abortions. Substantial authority exists, however, for a middle ground: although no penalties attached to abortions before the fetus had quickened, performing a postquickening abortion was a common-law crime, most likely a misdemeanor.” Susan Frelich Appleton, “Abortion,” in 1 *Encyclopedia of Crime and Justice* 1, 1 (Sanford H. Kadish ed., 1983).

induced abortion. An abortion purposely and artificially caused either by the mother herself or by a third party. See ABORTIFACIENT.

late-term abortion. An abortion performed during the latter stages of pregnancy, usu. after the middle of the second trimester.

partial-birth abortion. An abortion in which a viable fetus is partially delivered before being destroyed.

spontaneous abortion. See MISCARRIAGE.

therapeutic abortion. An abortion carried out to preserve the life or health of the mother. [Cases: Abortion and Birth Control 0.5.]

“Until recently it was common to speak of ‘therapeutic abortion.’ The literal meaning of the term is an abortion induced for medical reasons, but it was commonly understood to mean one for the purpose of saving the mother's life” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 193 (3d ed. 1982).

ABORTIVE CHILD

abortive child. See CHILD.

ABORTIVE TRIAL

abortive trial. See MISTRIAL.

ABOUTISSEMENT

aboutissement (a-boo-tees-mahn), n. [Law French] An abuttal or abutment.

ABOVE

above,adj. & adv. (Of an appellate court) having dealt with an appeal in the case at issue; having the power to review the case at issue. Cf. BELOW.

ABOVE-MENTIONED

above-mentioned,adj. See AFORESAID.

ABOVE-STATED

above-stated,adj. See AFORESAID.

ABOVE-THE-LINE

above-the-line,adj. (Of a deduction) taken after calculating gross income and before calculating adjusted gross income. • Examples of above-the-line deductions are IRA contributions and moving expenses. Formerly, individual tax returns had a dark line above which these deductions were written. Cf. BELOW-THE-LINE. [Cases: Internal Revenue 3114. C.J.S. Internal Revenue § 59.]

ABPATRUUS

abpatruus (ab-pa-troo-<<schwa>>s), n.[Latin] Roman & civil law. A great-great-great-uncle. — Also termed patruus maximus.

ABRIDGE

abridge,vb.1. To reduce or diminish <abridge one's civil liberties>.2. To condense (as a book or other writing) <the author abridged the treatise before final publication>.

ABRIDGMENT

abridgment. 1. A condensed version of a longer work. 2.Hist. A legal digest or encyclopedia.

ABRIDGMENT OF DAMAGES

abridgment of damages.The right of a court to reduce the damages in certain cases. See REMITTITUR. [Cases: New Trial 162(1). C.J.S. New Trial §§ 271–274, 276–278.]

ABROAD

abroad,adv. Outside a country; esp., other than in a forum country.

ABROGARE

abrogare (ab-roh-gair-ee), vb. [Latin] Roman law. To remove something from an old law by a new law. — Also termed exrogare.

ABROGATE

abrogate (ab-r<<schwa>>-gayt), vb. To abolish (a law or custom) by formal or authoritative action; to annul or repeal. Cf. OBROGATE. — abrogation,n.

ABROGATION OF ADOPTION

abrogation of adoption.Family law. An action brought by an adoptive parent to terminate the parent–child relationship by annulment of the decree of adoption. • An adoption may be nullified if it resulted from fraud, misrepresentation, or undue influence, or if nullification is in the child's best interests. — Also termed annulment of adoption. Cf. WRONGFUL ADOPTION.

ABS

ABS.abbr. 1.AMERICAN BUREAU OF SHIPPING. 2.AUTOMATED BOND SYSTEM. 3. See able-bodied seaman under SEAMAN.

ABSCOND

abscond (ab-skond), vb.1. To depart secretly or suddenly, esp. to avoid arrest, prosecution, or service of process. 2. To leave a place, usu. hurriedly, with another's money or property. — abscondence (ab-skon-d<< schwa>>nts), n.

ABSCONDING DEBTOR

absconding debtor.See DEBTOR.

ABSENCE

absence,n.1. The state of being away from one's usual place of residence. 2. A failure to appear when expected. 3.Louisiana law. The state of being an absent person. — Also termed (in sense 3) absentia.

ABSENT DEBTOR

absent debtor.See DEBTOR.

ABSENTE

absente (ab-sen-tee). [Latin] In the absence of. • This term formerly appeared in law reports to note the absence of a judge <the court, absente Ellis, J., was unanimous>.

ABSENTEE

absentee,n.1. A person who is away from his or her usual residence; one who is absent. 2. A person who is not present where expected. 3. A person who either resides out of state or has departed from the state without having a representative there.

“Generally, a person is an absentee when he is absent from his domicile or usual place of residence; but in light of pertinent statutes he is an absentee when he is without the state and has no representative therein.” 1 C.J.S. Ab-sentee § 2, at 339 (1985).

absentee,adj. Having the characteristics of an absentee <absentee voter>.

absentee,adv. In an absentee manner <Debby voted absentee>.

ABSENTEE BALLOT

absentee ballot.See BALLOT(2).

ABSENTEE LANDLORD

absentee landlord. See LANDLORD.

ABSENTEE MANAGEMENT

absentee management. See absentee landlord under LANDLORD.

ABSENTEE VOTE

absentee vote. See absentee voting under VOTING.

ABSENTEE VOTING

absentee voting. See VOTING.

ABSENTE REO

absente reo (ab-sen-tee ree-oh). [Latin] The defendant being absent. • This phrase appears syntactically as what English language grammarians term a “nominative absolute.”

ABSENTIA

absentia. 1. ABSENCE(3). 2. IN ABSENTIA.

ABSENT PARENT

absent parent. See noncustodial parent under PARENT.

ABSENT PERSON

absent person. See PERSON(1).

ABSOILE

absoile (ab-soyl), vb. See ASSOIL.

ABSOLUTE

absolute, adj. 1. Free from restriction, qualification, or condition <absolute ownership>. 2. Conclusive and not liable to revision <absolute delivery>. 3. Unrestrained in the exercise of governmental power <absolute monarchy>. — absolute, n.

ABSOLUTE ASSIGNEE

absolute assignee. See ASSIGNEE.

ABSOLUTE ASSIGNMENT

absolute assignment. See ASSIGNMENT(2).

ABSOLUTE AUCTION

absolute auction. See auction without reserve under AUCTION.

ABSOLUTE-BAR RULE

absolute-bar rule. The principle that, when a creditor sells collateral without giving reasonable notice to the debtor, the creditor may not obtain a deficiency judgment for any amount of the debt that is not satisfied by the sale. [Cases: Mortgages 375, 559(3); Secured Transactions 230, 240. C.J.S. Mortgages §§ 674–676, 934–935, 937, 950; Secured Transactions §§ 162–170, 172, 174–175.]

ABSOLUTE CONTRABAND

absolute contraband. See CONTRABAND.

ABSOLUTE CONVEYANCE

absolute conveyance. See CONVEYANCE.

ABSOLUTE COVENANT

absolute covenant. See COVENANT(1).

ABSOLUTE DEED

absolute deed. See DEED.

ABSOLUTE DEFENSE

absolute defense. See real defense under DEFENSE(4).

ABSOLUTE DELIVERY

absolute delivery. See DELIVERY.

ABSOLUTE DISPARITY

absolute disparity. Constitutional law. The difference between the percentage of a group in the general population and the percentage of that group in the pool of prospective jurors on a venire.

- For example, if African-Americans make up 12% of a county's population and 8% of the potential jurors on a venire, the absolute disparity of African-American veniremembers is 4%. The reason for calculating the disparity is to analyze a claim that the jury was not impartial because the venire from which it was chosen did not represent a fair cross-section of the jurisdiction's population. Some courts criticize the absolute-disparity analysis, favoring instead the comparative-disparity analysis, in the belief that the absolute-disparity analysis understates the deviation. See FAIR-CROSS-SECTION REQUIREMENT; DUREN TEST; STATISTICAL-DECISION THEORY Y. Cf. COMPARATIVE DISPARITY. [Cases: Jury 33(1.1). C.J.S. Juries §§ 269–273, 279, 306.]

ABSOLUTE DIVORCE

absolute divorce. See divorce a vinculo matrimonii under DIVORCE.

ABSOLUTE DUTY

absolute duty. See DUTY(1).

ABSOLUTE ESTATE

absolute estate. See ESTATE(1).

ABSOLUTE GIFT

absolute gift. See inter vivos gift under GIFT.

ABSOLUTE GUARANTY

absolute guaranty. See GUARANTY.

ABSOLUTE IMMUNITY

absolute immunity. See IMMUNITY(1).

ABSOLUTE INTEREST

absolute interest. See INTEREST(2).

ABSOLUTE LAW

absolute law. A supposed law of nature thought to be unchanging in principle, although circumstances may vary the way in which it is applied. See NATURAL LAW .

ABSOLUTE LEGACY

absolute legacy. See LEGACY.

ABSOLUTE LIABILITY

absolute liability. See strict liability under LIABILITY.

ABSOLUTE MAJORITY

absolute majority. See MAJORITY.

ABSOLUTE MARTIAL LAW

absolute martial law. See MARTIAL LAW.

ABSOLUTE NOVELTY

absolute novelty. See NOVELTY.

ABSOLUTE-NOVELTY REQUIREMENT

absolute-novelty requirement. See absolute novelty under NOVELTY.

ABSOLUTE NUISANCE

absolute nuisance. See NUISANCE.

ABSOLUTE NULLITY

absolute nullity. See NULLITY.

ABSOLUTE OBLIGATION

absolute obligation. See OBLIGATION.

ABSOLUTE PARDON

absolute pardon. See PARDON.

ABSOLUTE POLLUTION EXCLUSION

absolute pollution exclusion. See pollution exclusion under EXCLUSION(3).

ABSOLUTE PRESUMPTION

absolute presumption. See conclusive presumption under PRESUMPTION.

ABSOLUTE-PRIORITY RULE

absolute-priority rule. Bankruptcy. The rule that a confirmable reorganization plan must provide for full payment to a class of dissenting unsecured creditors before a junior class of claimants will be allowed to receive or retain anything under the plan. • Some jurisdictions recognize an exception to this rule when a junior class member, usu. a partner or shareholder of the debtor, contributes new capital in exchange for an interest in the debtor. 11 USCA § 1129(b)(2)(B)(ii). [Cases: Bankruptcy 3561. C.J.S. Bankruptcy § 395.]

ABSOLUTE PRIVILEGE

absolute privilege. See PRIVILEGE(1).

ABSOLUTE PROPERTY

absolute property. See PROPERTY.

ABSOLUTE RIGHT

absolute right. See RIGHT.

ABSOLUTE SALE

absolute sale. See SALE.

ABSOLUTE SIMULATED CONTRACT

absolute simulated contract. See CONTRACT.

ABSOLUTE TITLE

absolute title. See TITLE(2).

ABSOLUTE VETO

absolute veto. See VETO.

ABSOLUTIO

absolutio (ab-s<<schwa>>-loo-shee-oh). See ABSOLUTION(2).

ABSOLUTION

absolution (ab-s<<schwa>>-loo-sh<<schwa>>n).1. Release from a penalty; the act of absolving. 2.Civil law. An acquittal of a criminal charge. — Also termed absolutio. 3.Eccles. law. Official forgiveness of sins.

ABSOLUTISM

absolutism (ab-s<<schwa>>-loo-tiz-<<schwa>>m), n. In politics, the atmosphere surrounding a dictator whose power has no restrictions, checks, or balances; the belief in such a dictator. — absolutist (ab-s<<schwa>>-loo-tist), adj. & n.

ABSOLVE

absolve (ab- or <<schwa>>b-zolv), vb.1. To release from an obligation, debt, or responsibility. 2. To free from the penalties for misconduct. — absolver,n.

ABSOLVITOR

absolvitor (ab-sol-vi-t<<schwa>>r), n. Scots law. A decision in a civil action in favor of the defender; an acquittal. — absolvitory,adj.

ABSORBABLE RISK

absorbable risk.See RISK.

ABSORPTION

absorption,n.1. The act or process of including or incorporating a thing into something else; esp., the application of rights guaranteed by the U.S. Constitution to actions by the states. 2.Int'l law. The merger of one nation into another, whether voluntarily or by subjugation. 3.Labor law. In a postmerger collective-bargaining agreement, a provision allowing seniority for union members in the resulting entity. 4.Real estate. The rate at which property will be leased or sold on the market at a given time. 5.Commercial law. A sales method by which a manufacturer pays the reseller's freight costs, which the manufacturer accounts for before quoting the reseller a price. — Also termed (in sense 5) freight absorption. — absorb,vb.

ABSQUE

absque (abs-kwee), adv.[Latin] Without.

ABSQUE ALIQUO INDE REDDENDO

absque aliquo inde reddendo (abs-kwee al-<<schwa>>-kwoh in-dee ri-den-doh), adv.[Law Latin] Hist. Without rendering anything therefrom. • This phrase appeared in royal grants in which no tenure was reserved.

ABSQUE CONSIDERATIONE CURIAE

absque consideratione curiae (abs-kwee k<<schwa>>n-sid-<<schwa>>-ray-shee-oh-nee

kyoor-ee-ee), adv.[Law Latin] Without the consideration of the court; without judgment.

ABSQUE DUBIO

absque dubio (abs-kwee d[y]oo-bee-oh), adv.[Latin] Without doubt.

ABSQUE HOC

absque hoc (abs-kwee hok), adv.[Latin] Archaic. Without this. • The phrase was formerly used in common-law pleading to introduce the denial of allegations. — Also termed sans ce que. See TRAVERSE.

ABSQUE IMPETITIONE VASTI

absque impetitione vasti (abs-kwee im-p<<schwa>>-tish-ee-oh-nee vas-ti), adv.[Law Latin] Hist. See WITHOUT IMPEACHMENT OF WASTE.

ABSQUE INJURIA DAMNUM

absque injuria damnum (ab-skwee in-joor-ee-<<schwa>> dam-n<<schwa>>m). [Law Latin] See DAMNUM SINE INJURIA. — Often shortened to absque injuria.

ABSQUE IPSIUS REGIS SPECIALI LICENTIA

absque ipsius regis speciali licentia (abs-kwee ip-see-<<schwa>>s ree-jis spesh-ee-ay-II li-sen-shee-<<schwa>>). [Law Latin] Hist. Without the special authority of the king himself. • The phrase was part of a law forbidding Crown vassals from transferring land without a special warrant.

ABSQUE TALI CAUSA

absque tali causa (abs-kwee tay-IIkaw-z<<schwa>>), adv.[Law Latin] Without such cause. • In common-law pleading, this was part of the larger phrase de injuria sua propria, absque tali causa (“of his own wrong, without such cause”) appearing in a reply that a trespass plaintiff made to counter a defendant's claim of excuse. In an assault case, for example, if a defendant pleaded that he had struck the plaintiff in self-defense, the plaintiff could reply that the defendant was guilty of his own wrong committed without such cause as alleged. See DE INJURIA.

ABS RULES

ABS Rules.Maritime law. Industry standards for the construction, maintenance, and operation of seagoing vessels and stationary offshore facilities, as set and enforced by the American Bureau of Shipping. See AMERICAN BUREAU OF SHIPPING .

ABSTAIN

abstain,vb.1. To voluntarily refrain from doing something, such as voting in a deliberative assembly. 2. (Of a federal court) to refrain from exercising jurisdiction over a matter. [Cases: Federal Courts 41–65.]

ABSTENTION

abstention. 1. The act of withholding or keeping back (something or oneself); esp., the withholding of a vote. 2. A federal court's relinquishment of jurisdiction when necessary to avoid needless conflict with a state's administration of its own affairs. 3. The legal principle underlying such a relinquishment of jurisdiction. Cf. COMITY; OUR FEDERALISM. [Cases: Federal Courts 41–65. C.J.S. Bankruptcy §§ 16, 40.]

Burford abstention. A federal court's refusal to review a state court's decision in cases involving a complex regulatory scheme and sensitive areas of state concern. *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098 (1943).

Colorado River abstention. A federal court's decision to abstain while relevant and parallel state-court proceedings are underway. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236 (1976).

equitable abstention. A federal court's refraining from interfering with a state administrative agency's decision on a local matter when the aggrieved party has adequate relief in the state courts.

permissive abstention. Abstention that a bankruptcy court can, but need not, exercise in a dispute that relates to the bankruptcy estate but that can be litigated, or is being litigated, in another forum. • In deciding whether to abstain, the bankruptcy court must consider (1) the degree to which state law governs the case, (2) the appropriateness of the procedure to be followed in the other forum, (3) the remoteness of the dispute to the issues in the bankruptcy case, and (4) the presence of nondebtor parties in the dispute. 28 USCA § 1334(c)(1). [Cases: Federal Courts 47.5.]

Pullman abstention. A federal court's decision to abstain so that state courts will have an opportunity to settle an underlying state-law question whose resolution may avert the need to decide a federal constitutional question. *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643 (1941). [Cases: Federal Courts 43, 46.]

Thibodaux abstention (tib-*schwa*-doh). A federal court's decision to abstain so that state courts can decide difficult issues of public importance that, if decided by the federal court, could result in unnecessary friction between state and federal authorities. *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 79 S.Ct. 1070 (1959). [Cases: Federal Courts 41, 43.]

Younger abstention. 1. A federal court's decision not to interfere with an ongoing state criminal proceeding by issuing an injunction or granting declaratory relief, unless the prosecution has been brought in bad faith or merely as harassment. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971). — Also termed equitable-restraint doctrine. [Cases: Federal Courts 49, 51, 54.] 2. By extension, a federal court's decision not to interfere with a state-court civil proceeding used to enforce the criminal law, as to abate an obscene nuisance. See OUR FEDERALISM.

ABSTINENCE

abstinence (ab-st*schwa*-n*schwa*nts). The practice of refraining completely from indulgence in some act; esp., the practice of not having sex or of not consuming alcoholic

beverages.

ABSTRACT

abstract, n.1. A concise statement of a text, esp. of a legal document; a summary. See ABSTRACT OF JUDGMENT; ABSTRACT OF TITLE. 2. Patents. A one-paragraph summary of an invention's design and function, including its nature, structure, purpose, and novelty. • The abstract is a required part of a patent application, and also appears on the front page of the patent itself. It may not exceed 150 words. For the purpose of determining adequacy of disclosure, the abstract is considered to be part of the specification. See 35 USCA § 112. — Also termed abstract of the disclosure; abstract of the specification. [Cases: Patents 99. C.J.S. Patents § 139.]

ABSTRACT COMPROMIS

abstract compromis. See general compromis under COMPROMIS.

ABTRACTER

abstracter. See ABTRACTOR.

ABSTRACT IDEA

abstract idea. Intellectual property. A concept or thought, removed from any tangible embodiment. • An abstract idea is one of the categories of unpatentable subject matter, along with natural phenomena and laws of nature. But a process that uses abstract ideas to produce a useful result can be patented. Copyright law likewise will not protect an abstract idea, but only its expression. The law of unfair competition, on the other hand, does protect abstract ideas that meet the other criteria of a trade secret. See business-method patent under PATENT.

ABSTRACTION

abstraction (ab- or <<schwa>>b-strak-sh<<schwa>>n), n.1. The mental process of considering something without reference to a concrete instance <jurisprudence is largely the abstraction of many legal particulars>. 2. A theoretical idea not applied to any particular instance <utopia in any form is an abstraction>. 3. The summarizing and recording of a legal instrument in public records <abstraction of the judgment in Tarrant County>. 4. The act of taking with the intent to injure or defraud <the abstraction of funds was made possible by the forged signature on the check>. — abstract (ab-strakt), vb.

ABSTRACTION-FILTRATION-COMPARISON TEST

abstraction-filtration-comparison test. Copyright. A judicially created test for determining whether substantial similarity exists between two works in an action for infringement. • In the first step, the court dissects the copy-righted work's structure and isolates each level of abstraction or generality (abstraction test). In the second step, the court examines each level of abstraction and separates out the unprotectable elements such as ideas, processes, facts, public-domain information, and merger material (filtration test). In the third step, the court compares the resulting core of protectable expression with the accused work to determine whether substantial elements of the copyrighted work have been misappropriated (comparison test). This test was first applied by

the Second Circuit in *Computer Associates Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693 (2d Cir. 1992). Although that case involved computer software and the test is usu. applied in software-infringement cases, the test has also been applied to nonsoftware works. — Also termed abstraction-filtration test. See SIMILARITY. Cf. ABSTRACTIONS TEST. [Cases: Copyrights and Intellectual Property 53(1).]

ABSTRACTIONS TEST

abstractions test. Copyright. A means of comparing copyrighted material with material that allegedly infringes the copyright by examining whether the actual substance has been copied or whether the two works merely share the same abstract ideas. • The primary authority for the abstractions test is Judge Learned Hand's opinion in *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 (2d Cir. 1930). Although referred to as a “test,” it is not a bright-line test, but an approach to discerning the boundaries of protectable expression by isolating and comparing each level of abstraction in the two works, from the lowest (most detailed) to the highest (most conceptual). Cf. ABSTRACTION-FILTRATION-COMPARISON TEST; LOOK-AND-FEEL TEST. [Cases: Copyrights and Intellectual Property 53(1).]

ABSTRACT JURIDICAL ACT

abstract juridical act. See ACT.

ABSTRACT OF A FINE

abstract of a fine. See NOTE OF A FINE.

ABSTRACT OF CONVICTION

abstract of conviction. A summary of the court's finding on an offense, esp. a traffic violation. [Cases: Auto-mobiles 144.2(5.1).]

ABSTRACT OF JUDGMENT

abstract of judgment. A copy or summary of a judgment that, when filed with the appropriate public office, creates a lien on the judgment debtor's nonexempt property. See judgment lien under LIEN. [Cases: Judgment 768(1). C.J.S. Judgments §§ 559–561, 568.]

ABSTRACT OF RECORD

abstract of record. An abbreviated case history that is complete enough to show an appellate court that the questions presented for review have been preserved. [Cases: Appeal and Error 579; Criminal Law 1103. C.J.S. Appeal and Error § 496.]

ABSTRACT OF THE DISCLOSURE

abstract of the disclosure. See ABSTRACT(2).

ABSTRACT OF THE SPECIFICATION

abstract of the specification. See ABSTRACT(2).

ABSTRACT OF TITLE

abstract of title. A concise statement, usu. prepared for a mortgagee or purchaser of real property, summarizing the history of a piece of land, including all conveyances, interests, liens, and encumbrances that affect title to the property. — Also termed brief; brief of title. [Cases: Abstracts of Title 1. C.J.S. Abstracts of Title §§ 2–3, 5.]

good and merchantable abstract of title. An abstract of title showing clear, good, and marketable title, rather than showing only the history of the property. See clear title, good title, and marketable title under TITLE(2).

ABTRACTOR

abstractor (ab- or <<schwa>>b-strak-t<<schwa>>r). A person who prepares abstracts of title. — Also spelled abstracter. [Cases: Abstracts of Title 3. C.J.S. Abstracts of Title §§ 6–20.]

ABSTRACT QUESTION

abstract question. See HYPOTHETICAL QUESTION.

ABSURDITY

absurdity, n. The state or quality of being grossly unreasonable; esp., an interpretation that would lead to an unconscionable result, esp. one that the parties or (esp. for a statute) the drafters could not have intended and probably never considered. Cf. GOLDEN RULE.

A-B TRUST

A-B trust. See bypass trust under TRUST.

AB URBE CONDITA

ab urbe condita (ab <<schwa>>r-bee kon-di-t<<schwa>>). [Latin] From the founding of the city (esp. Rome in 753 B.C.). • This term is sometimes used in abbreviated form in classical dates. For example, the date “23 A.U.C.” means “23 years after the founding of Rome,” or 730 B.C. — Abbr. A.U.C.

ABUSE

abuse (<<schwa>>-byoos), n. 1. A departure from legal or reasonable use; misuse. 2. Physical or mental mal-treatment, often resulting in mental, emotional, sexual, or physical injury. — Also termed cruel and abusive treatment. Cf. NEGLECT; CRUELTY.

abuse of the elderly. Abuse of a senior citizen by a caregiver. • Examples include deprivation of food or medication, beatings, oral assaults, and isolation. — Also termed elder abuse. [Cases: Assault and Battery 48. C.J.S. Assault and Battery §§ 2–3, 62, 64–66, 81.]

carnal abuse. See sexual abuse (1).

child abuse. 1. Intentional or neglectful physical or emotional harm inflicted on a child, including sexual mole-station; esp., a parent's or caregiver's act or failure to act that results in a

child's exploitation, serious physical or emotional injury, sexual abuse, or death. 2. An act or failure to act that presents an imminent risk of serious harm to a child. • Child abuse can be either intentional or negligent. The first case of child abuse actually prosecuted occurred in New York City in 1874. An eight-year-old girl named Mary Ellen was found to have been severely abused. Her abusers were prosecuted under the law for prevention of cruelty to animals, since no law protecting children then existed. Child abuse was first recognized as a medical concern in 1962, when Dr. C. Henry Kempe introduced the medical concept of battered-child syndrome. — Also termed cruelty to a child; cruelty to children; child maltreatment. See abused child under CHILD; battered child under CHILD; BATTERED-CHILD SYNDROME. Cf. secondary abuse. [Cases: Infants 13–13.5(2), 15. C.J.S. Infants §§ 5, 92–98.]

domestic abuse. See domestic violence under VIOLENCE.

elder abuse. See abuse of the elderly.

emotional abuse. Physical or mental abuse that causes or could cause serious emotional injury.

secondary abuse. Child abuse suffered by children who, although they are not physically abused, witness domestic violence within their families.

sexual abuse. 1. An illegal sex act, esp. one performed against a minor by an adult. — Also termed carnal abuse. 2. RAPE(2). [Cases: Assault and Battery 59; Infants 13. C.J.S. Assault and Battery § 74; Infants §§ 5, 92–93, 95–98.]

spousal abuse. Physical, sexual, or psychological abuse inflicted by one spouse on the other spouse; esp., wife-beating. See BATTERED-WOMAN SYNDROME.

abuse (<<schwa>>-byooz), vb. 1. To damage (a thing). 2. To depart from legal or reasonable use in dealing with (a person or thing); to misuse. 3. To injure (a person) physically or mentally. 4. In the context of child welfare, to hurt or injure (a child) by maltreatment. • In most states, a finding of abuse is generally limited to maltreatment that causes or threatens to cause lasting harm to the child.

ABUSED CHILD

abused child. See CHILD.

ABUSEE

abusee (<<schwa>>-byoo-zee), n. One who is or has been abused.

ABUSE EXCUSE

abuse excuse. Criminal law. The defense that a defendant cannot tell right from wrong or control impulses because of physical or mental abuse suffered as a child. • Like the traditional excuse of insanity, the abuse excuse is asserted by a defendant in an effort to avoid all culpability for the crime charged. Cf. BATTERED-CHILD SYNDROME; BATTERED-WOMAN SYNDROME.

ABUSE OF DISCOVERY

abuse of discovery. See DISCOVERY ABUSE.

ABUSE OF DISCRETION

abuse of discretion. 1. An adjudicator's failure to exercise sound, reasonable, and legal decision-making. 2. An appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence. See DISCRETION. [Cases: Appeal and Error 946; Criminal Law 1147. C.J.S. Appeal and Error § 772.]

ABUSE OF PROCESS

abuse of process. The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. — Also termed abuse of legal process; malicious abuse of process; malicious abuse of legal process; wrongful process; wrongful process of law. Cf. MALICIOUS PROSECUTION. [Cases: Process 168–171. C.J.S. Process §§ 106–114.]

“One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process.” Restatement (Second) of Torts § 682 (1977).

ABUSE OF RIGHTS

abuse of rights. 1. Int'l law. A country's exercise of a right either in a way that impedes the enjoyment by other countries of their own rights or for a purpose different from that for which the right was created (e.g., to harm another country). 2. Louisiana law. A person's exercise of a right in an unneighborly spirit that, while of no benefit to that person, causes damage to the neighbor.

ABUSE-OF-RIGHTS DOCTRINE

abuse-of-rights doctrine. Civil law. The principle that a person may be liable for harm caused by doing something the person has a right to do, if the right is exercised (1) for the purpose or primary motive of causing harm, (2) without a serious and legitimate interest that is deserving of judicial protection, (3) against moral rules, good faith, or elementary fairness, or (4) for a purpose other than its intended legal purpose. [Cases: Torts 6. C.J.S. Torts §§ 5, 16–22.]

ABUSE OF THE ELDERLY

abuse of the elderly. See ABUSE.

ABUSE-OF-THE-WRIT DOCTRINE

abuse-of-the-writ doctrine. Criminal procedure. The principle that a petition for a writ of habeas corpus may not raise claims that should have been, but were not, asserted in a previous petition. Cf. SUCCESSIVE-WRIT DOCTRINE. [Cases: Habeas Corpus 896.]

ABUSER

abuser (<<schwa>>-byoo-z<<schwa>>r), n. 1. One who abuses someone or something. 2. ABUSE(1).

ABUSIVE

abusive (<<schwa>>-byoo-siv), adj.1. Characterized by wrongful or improper use <abusive discovery tactics>.2. (Of a person) habitually cruel, malicious, or violent <abusive parent>. — abusively,adv.

ABUSUS

abusus (<<schwa>>-byoo-s<<schwa>>s), n. Civil law. The right to dispose of one's property.

ABUT

abut (<<schwa>>-b<<schwa>>t), vb. To join at a border or boundary; to share a common boundary with <the company's land in Arizona abuts the Navajo Indian reservation>. — abutment (<<schwa>>-b<<schwa>>t-m<<schwa>>nt), n.

ABUTTALS

abuttals (<<schwa>>-b<<schwa>>t-<<schwa>>lz). Land boundaries; the boundary lines of a piece of land in relation to other contiguous lands. — Also termed (archaically) buttals.

ABUTTER

abutter (<<schwa>>-b<<schwa>>t-<<schwa>>r).1. The owner of adjoining land; one whose property abuts another's. [Cases: Adjoining Landowners 1.C.J.S. Adjoining Landowners §§ 2, 6–8, 39.]

“The major right of [an abutter] is that of access to his property — a right of reasonable ingress and egress. He is entitled to compensation for any substantial impairment of this reasonable access. The right normally includes the right to have, at some point, a driveway onto his premises. An abutter does not have the right to the continued flow of traffic in the same amount or pattern past his premises.” Osborne M. Reynolds Jr., Handbook of Local Government Law § 180, at 620 (1982).

2. Land that adjoins the land in question.

ABUTTING FOOT

abutting foot.See FRONT FOOT.

A/C

a/c.abbr.ACCOUNT(4).

ACADEMIC

academic,adj.1. Of or relating to a school or a field of study; esp., of or relating to a field of study that is not vocational or commercial, such as the liberal arts <academic courses>.2. Theoretical; specif., not practical or immediately useful <academic question>.

ACADEMIC FREEDOM

academic freedom. The right (esp. of a university teacher) to speak freely about political or ideological issues without fear of loss of position or other reprisal. [Cases: Colleges and Universities 8.1(3). C.J.S. Colleges and Universities § 25.]

ACADEMIC LAWYER

academic lawyer. A law professor, usu. one who maintains a law practice on the side.

ACADÉMIE DE DROIT INTERNATIONAL DE LA HAYE

Académie de Droit International de La Haye. See HAGUE ACADEMY OF INTERNATIONAL LAW .

ACADEMY

academy. 1. An institution of higher learning. 2. An association dedicated to the advancement of knowledge in a particular field, such as the American Academy of Matrimonial Lawyers. 3. A private high school. 4. (cap.) A garden near Athens where Plato taught; hence, the school of philosophy that he led.

A CANCELLANDO

a cancellando (ay kan-s<<schwa>>-lan-doh). [Law Latin] From canceling.

“It has its name of chancery, cancellaria, from the judge who presides here, the lord chancellor or cancellarius; who, Sir Edward Coke tells us, is so termed a cancellando, from cancelling the king's letters patents when granted contrary to law” 3 William Blackstone, Commentaries on the Laws of England 46 (1768).

A CANCELLIS

a cancellis (ay kan-sel-is), n. [Law Latin] Hist. A chancellor, so called because he performed the duties of office behind a cancelli (“lattice”).

A CANCELLIS CURIAE EXPLODI

a cancellis curiae explodi (ay kan-sel-is kyoor-ee-I ek-sploh-dI). [Law Latin] Hist. To be expelled from the bar of the court.

A CAUSE DE CY

a cause de cy (ay kaw-z<<schwa>> d<<schwa>> see), adv. [Law French] For this reason.

ACCEDAS AD CURIAM

accedas ad curiam (ak-see-d<<schwa>>s ad kyoor-ee-<<schwa>>m), n. [Law Latin “you are to go to the court”] Hist. An original writ for removing a replevin action to a royal court from either of two feudal courts — a court baron or a hundred court. • It is a recordare facias loquelam for replevin actions. See RECORDARE FACIAS LOQUELAM.

ACCEDE

accede (ak-seed), vb.1. To consent or agree. 2. To be added (to something else) through accession. 3. To adopt. See ADOPTION(5).4. (Of a body politic) to accept unification with or annexation into another body politic. — accession, accedence (ak-see-d<<schwa>>nts), n.

ACCELERATED COST RECOVERY SYSTEM

Accelerated Cost Recovery System. An accounting method that is used to calculate asset depreciation and that allows for the faster recovery of costs by assigning the asset a shorter useful life than was previously permitted under the Internal Revenue Code. • This system applies to property put into service from 1981 to 1986. It was replaced in 1986 by the Modified Accelerated Cost Recovery System. — Abbr. ACRS. [Cases: Internal Revenue 3476. C.J.S. Internal Revenue §§ 230, 234, 239, 249.]

ACCELERATED DEPRECIATION METHOD

accelerated depreciation method. See DEPRECIATION METHOD.

ACCELERATED DISCLOSURE

accelerated disclosure. See accelerated discovery under DISCOVERY.

ACCELERATED DISCOVERY

accelerated discovery. See DISCOVERY.

ACCELERATED-REENTRY THEORY

accelerated-reentry theory. See POST-EXPIRATION-SALES THEORY.

ACCELERATED REMAINDER

accelerated remainder. See REMAINDER.

ACCELERATION

acceleration, n.1. The advancing of a loan agreement's maturity date so that payment of the entire debt is due immediately. [Cases: Bills and Notes 129(2). C.J.S. Bills and Notes; Letters of Credit §§ 76, 92–100.] 2. The shortening of the time for vesting in possession of an expectant interest. — Also termed acceleration of remainder. [Cases: Remainders 5. C.J.S. Estates §§ 77, 80.] 3. Property. The hastening of an owner's time for enjoyment of an estate because of the failure of a preceding estate. 4. Securities. The SEC's expediting of a registration statement's effective date so that the registrant bypasses the required 20-day waiting period. — accelerate, vb.

ACCELERATION CLAUSE

acceleration clause. A loan-agreement provision that requires the debtor to pay off the balance sooner than the due date if some specified event occurs, such as failure to pay an installment or to maintain insurance. Cf. DEMAND CLAUSE; INSECURITY CLAUSE. [Cases: Bills and Notes 129(2). C.J.S. Bills and Notes; Letters of Credit §§ 76, 92–100.]

ACCELERATION OF REMAINDER

acceleration of remainder. See ACCELERATION(2).

ACCEPTABLE IDENTIFICATION OF GOODS AND SERVICES MANUAL

Acceptable Identification of Goods and Services Manual. Trademarks. A U.S. Government publication that sets forth, for goods and services, known acceptable international class categorizations and descriptions that may be used in trademark applications submitted to the U.S. Patent and Trademark Office. • This manual is available from the U.S. Government Printing Office, Washington, D.C. 20402, and through the PTO's website at [http:// www.uspto.gov](http://www.uspto.gov).

ACCEPTANCE

acceptance, n.1. An offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed. • If an acceptance modifies the terms or adds new ones, it generally operates as a counteroffer. Cf. OFFER. [Cases: Contracts 22(1). C.J.S. Contracts §§ 46–51, 53–54; Trading Stamps and Coupons §§ 7–9.]

acceptance by silence. Acceptance of an offer not by explicit words but through the lack of an offeree's response in circumstances in which the relationship between the offeror and the offeree justifies both the offeror's expectation of a reply and the offeror's reasonable conclusion that the lack of one signals acceptance. • Ordinarily, silence does not give rise to an acceptance of an offer. [Cases: Contracts 22(1). C.J.S. Contracts §§ 46–51, 53–54; Trading Stamps and Coupons §§ 7–9.]

qualified acceptance. A conditional or partial acceptance that varies the original terms of an offer and operates as a counteroffer; esp., in negotiable instruments (bills of exchange), an acceptor's variation of the terms of the instrument. [Cases: Bills and Notes 83. C.J.S. Bills and Notes; Letters of Credit § 38.]

2. A buyer's assent that the goods are to be taken in performance of a contract for sale. • Under UCC § 2-606, a buyer's acceptance consists in (1) signifying to the seller that the goods are conforming ones or that the buyer will take them despite nonconformities, (2) not making an effective rejection, or (3) taking any action inconsistent with the seller's ownership. If the contract is for the sale of goods that are not identified when the contract is entered into, there is no acceptance until the buyer has had a reasonable time to examine the goods. But if the buyer deals with them as owner, as by reselling them, a court may find constructive acceptance. [Cases: Sales 178(1). C.J.S. Sales §§ 189–191, 194–197.] “Acceptance means communicated acceptance.... [It] must be something more than a mere mental assent.” William R. Anson, *Principles of the Law of Contract* 34 (Arthur L. Corbin ed., 3d Am. ed. 1919). [But Corbin adds:] “This use of the word ‘communicated’ is open to some objection. To very many persons the word means that knowledge has been received. Frequently a contract is made even though the offeror has no such knowledge. In such case the acceptance is not ‘communicated’ and yet it consummates the contract.” *Id.* n.2.

“Acceptance of a conveyance or of a document containing a promise is a manifestation of assent to the terms thereof made, either before or after delivery, in accordance with any requirements imposed by the grantor or promisor. If the acceptance occurs before delivery and is

not binding as an option contract, it is revocable until the moment of delivery.” Restatement (Second) of Contracts § 106 (1979).

3. The formal receipt of and agreement to pay a negotiable instrument. [Cases: Bills and Notes 66–84. C.J.S. Bills and Notes; Letters of Credit §§ 4, 19, 21, 24, 37–40.] 4. A negotiable instrument, esp. a bill of exchange, that has been accepted for payment.

acceptance au besoin (oh b<<schwa>>-zwan). [French “in case of need”] An acceptance by one who has agreed to pay the draft in case the drawee fails to do so.

acceptance for honor.An acceptance or undertaking not by a party to the instrument, but by a third party, for the purpose of protecting the honor or credit of one of the parties, by which the third party agrees to pay the debt when it becomes due if the original drawee does not. • This type of acceptance inures to the benefit of all successors to the party for whose benefit it is made. — Also termed acceptance supra protest; acceptance for honor supra protest. [Cases: Bills and Notes 71. C.J.S. Bills and Notes; Letters of Credit § 37.]

“ ‘Acceptance for honour supra protest’ is an exception to the rule that only the drawee can accept a bill. A bill which has been dishonoured by non-acceptance and is not overdue may, with the consent of the holder, be accepted in this way for the honour of either the drawer or an indorser (i.e., to prevent the bill being sent back upon the drawer or indorser as unpaid) by a friend placing his own name upon it as acceptor for the whole, or part only, of the amount of the bill; after a protest has been drawn up declaratory of its dishonour by the drawee. Similarly, where a bill has been dishonoured by non-payment and protested any person may intervene and pay it supra protest for the honour of any person liable thereon; the effect being to discharge all parties subsequent to the party for whose honour it is paid.” 2 Stephen's Commentaries on the Laws of England 202–03 (L. Crispin Warmington ed., 21st ed. 1950).

accommodation acceptance.The acceptance of an offer to buy goods for current or prompt shipment by shipping nonconforming goods after notifying the buyer that the shipment is intended as an accommodation. • This type of “acceptance” is not truly an acceptance under contract law, but operates instead as a counteroffer if the buyer is duly notified. [Cases: Sales 23(4). C.J.S. Sales §§ 38–40.]

banker's acceptance.A bill of exchange drawn on and accepted by a commercial bank. • Banker's acceptances are often issued to finance the sale of goods in international trade. — Abbr. BA. — Also termed bank acceptance. [Cases: Banks and Banking 189; Bills and Notes 151. C.J.S. Banks and Banking §§ 452–458; Bills and Notes; Letters of Credit § 131.]

blank acceptance.Acceptance by a bill-of-exchange drawee before the bill is made, as indicated by the drawee's signature on the instrument.

conditional acceptance.An agreement to pay a draft on the occurrence or nonoccurrence of a particular event. [Cases: Bills and Notes 83. C.J.S. Bills and Notes; Letters of Credit § 38.]

express acceptance.A written or oral expression indicating that the drawee has seen the instrument and does not dispute its sufficiency. • While a written acceptance is typically signified

by the stamped or written word “ac-cepted” or “presented,” usu. on the instrument itself, an oral acceptance must be made directly to a drawer or holder who has waived the right to a written acceptance.

implied acceptance. An acceptance implied by a drawee whose actions indicate an intention to comply with the request of the drawer; conduct by the drawee from which the holder is justified in concluding that the drawee intends to accept the instrument. [Cases: Bills and Notes 70. C.J.S. Bills and Notes; Letters of Credit § 21.]

special acceptance. An acceptance that departs from either the terms of a bill or the terms added to but not otherwise expressed in a bill. • An example is an acceptance of a draft as payable in a particular place even though the draft contains no such limitation. [Cases: Bills and Notes 83. C.J.S. Bills and Notes; Letters of Credit § 38.]

trade acceptance. A bill of exchange for the amount of a specific purchase, drawn on and accepted by the buyer for payment at a specified time. [Cases: Bills and Notes 1. C.J.S. Bills and Notes; Letters of Credit §§ 2–3, 5–6, 8–9, 17–18, 22.]

5. An insurer's agreement to issue a policy of insurance. [Cases: Insurance 1731. C.J.S. Insurance §§ 273, 276–280.] — accept, vb. “And in some instances, insurance companies have even specified in the application forms that acceptance of an applicant's offer will not occur until the insurance policy is literally delivered to the applicant — that is, the insurer chooses to structure the arrangement so that acceptance is to be manifested by the physical delivery of the insurance policy to the applicant.” Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 2.1, at 39–40 (1988).

6. An heir's agreement to take an inheritance. See TACIT ACCEPTANCE. 7. See ADOPTION(5).

ACCEPTANCE AU BESOIN

acceptance au besoin. See ACCEPTANCE(4).

ACCEPTANCE BY SILENCE

acceptance by silence. See ACCEPTANCE(1).

ACCEPTANCE COMPANY

acceptance company. See sales finance company under FINANCE COMPANY.

ACCEPTANCE CREDIT

acceptance credit. See time letter of credit under LETTER OF CREDIT.

ACCEPTANCE CRITERIA

acceptance criteria. Intellectual property. Agreed-on performance standards that a custom-made product such as computer software or hardware or a commercial website must meet before the customer is legally obligated to accept the product and pay for it. See ACCEPTANCE

TESTING.

ACCEPTANCE DOCTRINE

acceptance doctrine. Construction law. The principle that, once an owner accepts the work of a contractor, the contractor is not liable to third parties for an injury arising from the contractor's negligence in performing under the contract, unless the injury results from a hidden, imminently dangerous defect that the contractor knows about and the owner does not know about. — Also termed accepted-work doctrine. [Cases: Negligence 1205(8). C.J.S. Negligence § 601.]

ACCEPTANCE FOR HONOR

acceptance for honor. See ACCEPTANCE(4).

ACCEPTANCE-OF-THE-BENEFITS RULE

acceptance-of-the-benefits rule. The doctrine that a party may not appeal a judgment after having voluntarily and intentionally received all or some part of the relief provided by it. [Cases: Appeal and Error 160. C.J.S. Appeal and Error §§ 193–194.]

ACCEPTANCE SAMPLING

acceptance sampling. The practice of examining only a few items from a shipment to determine the acceptability of the whole shipment.

ACCEPTANCE SUPRA PROTEST

acceptance supra protest. See acceptance for honor under ACCEPTANCE(4).

ACCEPTANCE TESTING

acceptance testing. Intellectual property. Formal experiments conducted by or on behalf of the customer to determine whether computer software or hardware or a commercial website satisfies the customer's acceptance criteria. • Usu., an acceptance-testing provision in a sales contract or license agreement is accompanied by a termination provision allowing the customer to back out of the contract if the product is not acceptable. — Also termed requirements testing. See ACCEPTANCE CRITERIA.

ACCEPTARE

acceptare (ak-sep-tair-ee), vb. [Latin] Civil law. To accept or assent to, as a promise made by another.

ACCEPTED-WORK DOCTRINE

accepted-work doctrine. See ACCEPTANCE DOCTRINE.

ACCEPTILATION

acceptilation (ak-sep-t<<schwa>>-lay-sh<<schwa>>n), n. [fr. Latin acceptilatio “release”] Roman & civil law. An oral release from an obligation even though payment has not been made in full; a complete discharge, esp. through a fictitious payment. — Also termed (in Roman law)

acceptilatio. Cf. APOCHA.

ACCEPTOR

acceptor. A person or entity that accepts a negotiable instrument and agrees to be primarily responsible for its payment or performance. [Cases: Bills and Notes 73. C.J.S. Bills and Notes; Letters of Credit § 39.]

ACCEPTOR SUPRA PROTEST

acceptor supra protest. One who accepts a bill that has been protested, for the honor of the drawer or an indorser. [Cases: Bills and Notes 71, 80. C.J.S. Bills and Notes; Letters of Credit § 37.]

ACCEPT SERVICE

accept service. To agree that process has been properly served even when it has not been. — Also termed accept service of process.

ACCESS

access, n. 1. An opportunity or ability to enter, approach, pass to and from, or communicate with <access to the courts>. 2. Family law. VISITATION(2). 3. Family law. The opportunity to have sexual intercourse. Cf. NON-ACCESS.

multiple access. In a paternity suit, the defense that the mother had lovers other than the defendant around the time of conception. • The basis for the defense is that because the mother bears the burden of proof, she must be able to prove that only the defendant could be the child's father. In some jurisdictions, this is still known by its common-law name, the exceptio plurium concubentium defense, or as simply the plurium defense. Juries or judges who wished to dismiss the case because of the mother's promiscuity, rather than because of the improbability of the defendant's paternity, often accepted this defense. Most states have now abrogated the defense. In fact, in recent years the issue of multiple access has declined in importance with the rise of highly accurate paternity testing. [Cases: Children Out-of-Wedlock 50. C.J.S. Children Out-of-Wedlock §§ 103, 106.]

4. Patents & trademarks. The right to obtain information about and to inspect and copy U.S. Patent and Trademark Office files of patents, patent applications, trademark applications, and inter partes proceedings pertaining to them. 5. Copyright. An opportunity by one accused of infringement to see, hear, or copy a copyrighted work before the alleged infringement took place <the duplication of the error proved that the defendant had access to the work>. • Proof of access is required to prove copyright infringement unless the two works are strikingly similar. [Cases: Copyrights and Intellectual Property 83(3.1).] “Since direct evidence of copying is rarely available, a plaintiff can rely upon circumstantial evidence to prove this essential element; the most important component of such circumstantial evidence to support a copyright infringement claim is proof of access. Evidence of access and substantial similarity create an inference of copying and establish a prima facie case of copying.” 18 Am. Jur. 2d Copyright and Literary Property § 206 (1985).

6. Copyright. The right to obtain information about and to inspect and copy U.S. Copyright Office files and deposited materials. See (for senses 3 & 4) POWER TO INSPECT. — access, vb.

ACCESS EASEMENT

access easement. See EASEMENT.

ACCESSIO

accessio (ak-s<<schwa>>sh-ee-oh) n. [Latin] Roman law. 1. The doctrine by which something of lesser size, value, or importance is integrated into something of greater size, value, or importance.

“If the identity of one thing (the accessory) is merged and lost in the identity of the other (the principal), the owner of the principal is the owner of the thing.... There is said to be accessio.... The term is used by some commentators (and, following them, by the French Civil Code) in a much wider sense to include all cases in which there has been an addition to my right, i.e. in which the object of my ownership has increased. The owner of an animal therefore acquires ownership of the young of the animal at birth by accessio, though in physical terms there has been not an accession but a separation. In this sense accessio includes all the original natural modes except occupatio and thesauri inventio. And there are other, intermediate, meanings. Since accessio as an abstract word is not Roman and no clear classification emerges from the texts, no one meaning or classification can be said to be ‘right,’ but those adopted by the French Civil Code are so wide as to be almost meaningless.” Barry Nicholas, *An Introduction to Roman Law* 133 & n.1 (1962).

2. ACCESSION(4).

ACCESSION

accession (ak-sesh-<<schwa>>n). 1. The act of acceding or agreeing <the family's accession to the kidnapper's demands>. 2. A coming into possession of a right or office <as promised, the state's budget was balanced within two years after the governor's accession>. 3. Int'l law. A method by which a nation that is not among a treaty's original signatories becomes a party to it <Italy became a party to the nuclear-arms treaty by accession>. See Vienna Convention on the Law of Treaties, art. 15 (1155 U.N.T.S. 331, 8 I.L.M. 679 (1969)). — Also termed adherence; adhesion. See INSTRUMENT OF ACCESSION . 4. The acquisition of title to personal property by bestowing labor on a raw material to convert it to another thing <the owner's accession to the lumber produced from his land>. — Also termed (in Roman law) accessio. See ADJUNCTION(2). [Cases: Accession 1. C.J.S. Accession §§ 2–8.]

“Accessio is the combination of two chattels belonging to different persons into a single article: as when A's cloth is used to patch B's coat, or a vehicle let on hire-purchase has new accessories fitted to it.” R.F.V. Heuston, *Salmond on the Law of Torts* 113 (17th ed. 1977).

5. A property owner's right to all that is added to the property (esp. land) naturally or by labor, including land left by floods and improvements made by others <the newly poured concrete driveway became the homeowner's property by accession>. • In Louisiana law, accession is the owner's right to whatever is produced by or united with something, either naturally or artificially.

La. Civ. Code arts. 483, 490, 507. Cf. ANNEXATION. 6. An improvement to existing personal property, such as new shafts on golf clubs. “The problem of accessions arises infrequently, judging from reported cases, but an obvious instance of the difficulty arises where a motor vehicle is being financed by a secured party and the debtor in possession of necessity acquires a new engine or new tires for the vehicle If the seller of the engine or tires reserved a security interest at the time the goods were installed, the seller should prevail over the vehicle's secured party, with a right to remove the accessions. Conversely, if the sale were on open credit with no security interest reserved, or if the seller acquired a security interest after installation of the goods, then the financier of the vehicle should prevail.” Ray D. Henson, Handbook on Secured Transactions Under the Uniform Commercial Code § 4-22, at 93 (2d ed. 1979).

7. The physical uniting of goods with other goods in such a manner that the identity of the original goods is not lost. UCC § 9-102(a)(1). 8. ACCESSORYSHIP.

ACCESS ORDER

access order. See VISITATION ORDER.

ACCESSORIAL

accessorial (ak-s<<schwa>>-sor-ee-<<schwa>>l), adj. 1. (Of a promise) made for the purpose of strengthening another's credit <an accessorial pledge by way of guaranty>. — Also termed accessory. 2. Criminal law. Of or relating to the accessory in a crime <accessorial guilt>. [Cases: Criminal Law 68–77. C.J.S. Criminal Law §§ 137–142.]

ACCESSORIAL OBLIGATION

accessorial obligation. See COLLATERAL OBLIGATION.

ACCESSORY

accessory (ak-ses-<<schwa>>-ree), n. 1. Something of secondary or subordinate importance. 2. Criminal law. A person who aids or contributes in the commission or concealment of a crime. • An accessory is usu. liable only if the crime is a felony. Cf. PRINCIPAL(2). [Cases: Criminal Law 68–77; Homicide 573. C.J.S. Criminal Law §§ 137–142.] — accessory, adj. — accessoryship, n.

“In most jurisdictions, the common-law distinctions between principals and accessories have largely been abolished, although the pertinent statutes vary in form and substance. Conceptually, the common-law pattern remains the same: The person who aids, abets, commands, counsels, or otherwise encourages another to commit a crime is still regarded as a party to the underlying crime as at common law, even though the labels principal in the first degree, principal in the second degree, and accessory before the fact are no longer used, and even though it usually does not matter whether the aider and abettor is or is not present at the scene of the crime.” 1 Charles E. Torcia, Wharton's Criminal Law § 35, at 202–03 (15th ed. 1993).

accessory after the fact. An accessory who was not at the scene of the crime but knows that a crime has been committed and who helps the offender try to escape arrest or punishment. 18 USCA § 3. • Most penal statutes establish the following four requirements: (1) someone else must

have committed a felony, and it must have been completed before the accessory's act; (2) the accessory must not be guilty as a principal; (3) the accessory must personally help the principal try to avoid the consequences of the felony; and (4) the accessory's assistance must be rendered with guilty knowledge. An accessory after the fact may be prosecuted for obstructing justice. — Sometimes shortened to accessory after. [Cases: Criminal Law 74, 82. C.J.S. Criminal Law §§ 140, 146–147.]

“At common law, an accessory after the fact is one who, knowing that a felony has been committed by another, receives, relieves, comforts, or assists the felon, or in any manner aids him to escape arrest or punishment. To be guilty as an accessory after the fact one must have known that a completed felony was committed, and that the person aided was the guilty party. The mere presence of the defendant at the scene of the crime will not preclude a conviction as an accessory after the fact, where the evidence shows the defendant became involved in the crime after its commission.” 21 Am. Jur. 2d Criminal Law § 209, at 275–76 (1998).

accessory at the fact. See principal in the second degree under PRINCIPAL (2).

“A principal in the second degree is one by whom the actual perpetrator of the felony is aided and abetted at the very time when it is committed; for instance, a car-owner sitting beside the chauffeur who kills someone by over-fast driving, or a passenger on a clandestine joy-riding expedition which results in manslaughter; or a bi-gamist's second ‘wife,’ if she knows he is committing bigamy. (In early law he was not ranked as a principal at all, but only as a third kind of accessory — the accessory at the fact.)” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 86 (16th ed. 1952).

accessory before the fact. An accessory who assists or encourages another to commit a crime but who is not present when the offense is actually committed. • Most jurisdictions have abolished this category of accessory and instead treat such an offender as an accomplice. — Sometimes shortened to accessory before. See ACCOMPLICE. [Cases: Criminal Law 68, 81. C.J.S. Criminal Law §§ 137, 146–147.]

“An accessory before the fact is a person who procures or advises one or more of the principals to commit the felony. This definition requires from him an instigation so active that a person who is merely shown to have acted as the stake-holder for a prize-fight, which ended fatally, would not be punishable as an accessory. The fact that a crime has been committed in a manner different from the mode which the accessory had advised will not excuse him from liability for it. Accordingly if A hires B to poison C, but B instead kills C by shooting him, A is none the less liable as accessory before the fact to C's murder. But a man who has counselled a crime does not become liable as accessory if, instead of any form of the crime suggested, an entirely different offence is committed.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 88 (16th ed. 1952).

ACCESSORY BUILDING

accessory building. See BUILDING.

ACCESSORY CONTRACT

accessory contract.See CONTRACT.

ACCESSORY OBLIGATION

accessory obligation.See OBLIGATION.

ACCESSORY RIGHT

accessory right.See RIGHT.

ACCESSORYSHIP

accessoryship. The status or fact of being an accessory. — Also termed (loosely) accession.

ACCESSORY THING

accessory thing.See THING.

ACCESSORY USE

accessory use.See USE(1).

ACCESS TO COUNSEL

access to counsel.See RIGHT TO COUNSEL.

ACCIDENT

accident,n.1. An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated. 2.Equity practice. An unforeseen and injurious occurrence not attributable to mistake, negligence, neglect, or misconduct.

“The word ‘accident,’ in accident policies, means an event which takes place without one's foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental. Death resulting from voluntary physical exertions or from intentional acts of the insured is not accidental, nor is disease or death caused by the vicissitudes of climate or atmosphere the result of an accident; but where, in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident.” 1A John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 360, at 455 (rev. vol. 1981).

“Policies of liability insurance as well as property and personal injury insurance frequently limit coverage to losses that are caused by ‘accident.’ In attempting to accommodate the layman's understanding of the term, courts have broadly defined the word to mean an occurrence which is unforeseen, unexpected, extraordinary, either by virtue of the fact that it occurred at all, or because of the extent of the damage. An accident can be either a sudden happening or a slowly evolving process like the percolation of harmful substances through the ground. Qualification of a particular incident as an accident seems to depend on two criteria: 1. the degree of foreseeability, and 2. the state of mind of the actor in intending or not intending the result.” John F. Dobbyn, *Insurance Law in a Nutshell* 128 (3d ed. 1996).

culpable accident. An accident due to negligence. • A culpable accident, unlike an unavoidable accident, is no defense except in those few cases in which wrongful intent is the exclusive and necessary basis for liability.

unavoidable accident. An accident that cannot be avoided because it is produced by an irresistible physical cause that cannot be prevented by human skill or reasonable foresight. • Examples include accidents resulting from lightning or storms, perils of the sea, inundations or earthquakes, or sudden illness or death. Unavoidable accident has been considered a means of avoiding both civil and criminal liability. — Also termed inevitable accident; pure accident; unavoidable casualty. Cf. ACT OF GOD. [Cases: Automobiles 201(10); Negligence 440. C.J.S. Motor Vehicles § 517; Negligence §§ 66–68, 209.]

“Inevitable accident ... does not mean a catastrophe which could not have been avoided by any precaution whatever, but such as could not have been avoided by a reasonable man at the moment at which it occurred, and it is common knowledge that a reasonable man is not credited with perfection of judgment.” P.H. Winfield, *A Textbook of the Law of Tort* § 15, at 43 (5th ed. 1950).

“An unavoidable accident is an occurrence which was not intended and which, under all the circumstances, could not have been foreseen or prevented by the exercise of reasonable precautions. That is, an accident is considered unavoidable or inevitable at law if it was not proximately caused by the negligence of any party to the action, or to the accident.” W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 29, at 162 (5th ed. 1984).

ACCIDENTAL

accidental, adj. 1. Not having occurred as a result of anyone's purposeful act; esp., resulting from an event that could not have been prevented by human skill or reasonable foresight. 2. Not having been caused by a tortious act.

ACCIDENTAL DEATH

accidental death. See DEATH.

ACCIDENTAL-DEATH BENEFIT

accidental-death benefit. An insurance-policy provision that allows for an additional payment (often double the face amount of the policy) if the insured dies as a result of an accident, as defined in the policy, and not from natural causes. — Abbr. ADB. [Cases: Insurance 2599. C.J.S. Insurance §§ 1094, 1096, 1170–1171.]

ACCIDENTAL HARM

accidental harm. See HARM.

ACCIDENTALIA

accidentalia (ak-si-den-tay-lee-*<<schwa>>*). [Law Latin “accidental things”] Hist. Incidents of a contract; non-essential contractual terms to which the parties expressly stipulate. Cf.

 ESSENTIALIA.

“Accidentalia have their existence entirely by express stipulation, and are never presumed without it.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 406 (George Watson ed., 7th ed. 1890).

ACCIDENTALIA FEUDI

accidentalia feudi (ak-si-den-tay-lee-<<schwa>> fyoo-dI). [Law Latin] Hist. All nonessential terms in a feudal contract; esp., those that are not essential to the fee (such as building restrictions). Cf. ESSENTIALIA FEUDI.

ACCIDENTAL INJURY

accidental injury. See INJURY.

ACCIDENTAL KILLING

accidental killing. Homicide resulting from a lawful act performed in a lawful manner under a reasonable belief that no harm could occur. — Also termed death by misadventure; homicide by misadventure; killing by misadventure; homicide per infortunium. See justifiable homicide under HOMICIDE; involuntary manslaughter under MANSLAUGHTER. Cf. MALICIOUS KILLING. [Cases: Homicide 762.]

ACCIDENTAL STRANDING

accidental stranding. See STRANDING.

ACCIDENT AND HEALTH INSURANCE

accident and health insurance. See health insurance under INSURANCE.

ACCIDENT-BASED INSURANCE

accident-based insurance. See occurrence-based liability insurance under INSURANCE.

ACCIDENT INSURANCE

accident insurance. See INSURANCE.

ACCIDENT POLICY

accident policy. See INSURANCE POLICY.

ACCIDERE

accidere (ak-sid-<<schwa>>r-ee), vb. [Latin] Civil law. 1. To fall down. 2. By extension, to befall or happen to.

ACCIPE ECCLESIAM

accipe ecclesiam (ak-si-pee e-klē-z[h]ee-<<schwa>>m). [Law Latin] Hist. Eccles. law. Receive this church or living. • The phrase was used by Patrons in presenting an incumbent to a

vacant parish. *Trado tibi ecclesiam* (“I deliver this church [or living] to you”) was also used. Cf. *TRADO TIBI ECCLESIAM* .

ACCIPERE

accipere (ak-sip-<<schwa>>r-ee), vb.[Latin] Civil law. To receive; esp., to take under a will.

ACCIPITARE

accipitare (ak-sip-<<schwa>>-tair-ee), vb.[Law Latin] Hist. To pay (a lord) in order to become a vassal; esp., to pay relief upon succeeding to an estate.

ACCLAMATION

acclamation.Parliamentary law. 1. Approval or election by general consent, usu. demonstrated by applause or cheering. • Election by acclamation is common in large conventions where only one candidate has been nominated. 2. Voting by applause or shouting.

ACCOLA

accola (ak-<<schwa>>-l<<schwa>>), n.[Latin “person living nearby”] 1.Roman law. A person who inhabits or occupies land near a certain place, such as one who dwells near a river. 2.Hist. An agricultural tenant; a tenant of a manor.

ACCOMENDA

accomenda (ak-<<schwa>>-men-d<<schwa>>).Hist. Maritime law. A contract between a cargo owner and a shipmaster whereby the parties agree to sell the cargo and divide the profits (after deducting the owner's costs). • This contract actually consists of two agreements: a *mandatum*, by which the owner gives the shipmaster the power to dispose of the cargo, and a partnership contract, by which the parties divide any profits arising from the sale. See *MANDATE*(5). [Cases: Shipping 104. C.J.S. Shipping §§ 247–250, 252–254.]

ACCOMMODATED PARTY

accommodated party.A party for whose benefit an accommodation party signs and incurs liability. Cf. *AC-COMMODATION PARTY*.

ACCOMMODATION

accommodation,n.1. A loan or other financial favor. 2. The act of signing an accommodation paper as surety for another. See *ACCOMMODATION PAPER*. 3. The act or an instance of making a change or provision for someone or something; an adaptation or adjustment. See *PUBLIC ACCOMMODATION*; *REASONABLE ACCOMMODATION* . 4. A convenience supplied by someone; esp., lodging and food.

public accommodation.A business that provides lodging, food, entertainment, or other services to the public; esp. (as defined by the Civil Rights Act of 1964), one that affects interstate commerce or is supported by state action. [Cases: Civil Rights 1043. C.J.S. Civil Rights § 23.]

ACCOMMODATION ACCEPTANCE

accommodation acceptance. See ACCEPTANCE(4).

ACCOMMODATION BILL

accommodation bill. See ACCOMMODATION PAPER.

ACCOMMODATION DIRECTOR

accommodation director. See dummy director under DIRECTOR.

ACCOMMODATION INDORSEMENT

accommodation indorsement. See INDORSEMENT.

ACCOMMODATION INDORSER

accommodation indorser. See INDORSER.

ACCOMMODATION LAND

accommodation land. See LAND.

ACCOMMODATION LINE

accommodation line. Insurance. One or more policies that an insurer issues to retain the business of a valued agent, broker, or customer, even though the risk would not be accepted under the insurer's usual standards.

ACCOMMODATION LOAN

accommodation loan. See LOAN.

ACCOMMODATION MAKER

accommodation maker. See MAKER.

ACCOMMODATION NOTE

accommodation note. See NOTE(1).

ACCOMMODATION PAPER

accommodation paper. A negotiable instrument that one party cosigns, without receiving any consideration, as surety for another party who remains primarily liable. • An accommodation paper is typically used when the cosigner is more creditworthy than the principal debtor. — Also termed accommodation bill; accommodation note. [Cases: Bills and Notes 49, 96. C.J.S. Bills and Notes; Letters of Credit §§ 24–25, 63.]

ACCOMMODATION PARTY

accommodation party. A person who, without recompense or other benefit, signs a negotiable instrument for the purpose of being a surety for another party (called the accommodated party) to the instrument. • The accommodation party can sign in any capacity (i.e., as maker, drawer, acceptor, or indorser). An accommodation party is liable to all parties except the accommodated

party, who impliedly agrees to pay the note or draft and to indemnify the accommodation party for all losses incurred in having to pay it. See SURETY. [Cases: Bills and Notes 49, 96, 122. C.J.S. Bills and Notes; Letters of Credit §§ 24–25, 63.]

ACCOMMODATION SURETY

accommodation surety. See voluntary surety under SURETY.

ACCOMMODATUM

accommodatum (<<schwa>>-kom-<<schwa>>-day-t<<schwa>>m), n. See COMMODATUM.

ACCOMPANY

accompany, vb. To go along with (another); to attend. • In automobile-accident cases, an unlicensed driver is not considered accompanied by a licensed driver unless the latter is close enough to supervise and help the former.

ACCOMPLICE

accomplice (<<schwa>>-kom-plis). 1. A person who is in any way involved with another in the commission of a crime, whether as a principal in the first or second degree or as an accessory. • Although the definition includes an accessory before the fact, not all authorities treat this term as including an accessory after the fact. [Cases: Criminal Law 59. C.J.S. Criminal Law §§ 127, 998.]

“There is some authority for using the word ‘accomplice’ to include all principals and all accessories, but the preferred usage is to include all principals and accessories before the fact, but to exclude accessories after the fact. If this limitation is adopted, the word ‘accomplice’ will embrace all perpetrators, abettors and inciters.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 727 (3d ed. 1982).

“A person is an ‘accomplice’ of another in committing a crime if, with the intent to promote or facilitate the commission of the crime, he solicits, requests, or commands the other person to commit it, or aids the other person in planning or committing it.” 1 Charles E. Torcia, *Wharton's Criminal Law* § 38, at 220 (15th ed. 1993).

2. A person who knowingly, voluntarily, and intentionally unites with the principal offender in committing a crime and thereby becomes punishable for it. See ACCESSORY. Cf. PRINCIPAL(2). “By definition an accomplice must be a person who acts with the purpose of promoting or facilitating the commission of the substantive offense for which he is charged as an accomplice. *State v. White*, N.J. 1984, 484 A.2d 691, 98 N.J. 122.” Model Penal Code § 2.06 annot. (1997).

ACCOMPLICE LIABILITY

accomplice liability. See LIABILITY.

ACCOMPLICE WITNESS

accomplice witness. See WITNESS.

ACCOMPT

accompt. See ACCOUNT(1).

ACCORD

accord, n. 1. An amicable arrangement between parties, esp. between peoples or nations; COMPACT; TREATY. 2. An offer to give or to accept a stipulated performance in the future to satisfy an obligor's existing duty, together with an acceptance of that offer. • The performance becomes what is known as a satisfaction. — Also termed executory accord; accord executory. See ACCORD AND SATISFACTION ; SATISFACTION. Cf. COM-PROMISE; NOVATION. [Cases: Accord and Satisfaction 1. C.J.S. Accord and Satisfaction §§ 2–17, 25–33.]

“An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing duty. Performance of the accord discharges the original duty.” Restatement (Second) of Contracts § 281(1) (1979).

“The term executory accord is sometimes used to underscore the point that the accord itself does not discharge the duty. It also reflects an historical anachronism, now generally rejected, under which an unperformed accord was not a defense to an action on the underlying duty.” E. Allan Farnsworth, Contracts § 4.24, at 289 n.10 (3d ed. 1999).

3. A signal used in a legal citation to introduce a case clearly supporting a proposition for which another case is being quoted directly.

accord, vb. 1. To furnish or grant, esp. what is suitable or proper <accord the litigants a stay of costs pending appeal>. 2. To agree <they accord in their opinions>.

ACCORD AND SATISFACTION

accord and satisfaction. An agreement to substitute for an existing debt some alternative form of discharging that debt, coupled with the actual discharge of the debt by the substituted performance. • The new agreement is called the accord, and the discharge is called the satisfaction. Cf. COMPROMISE; NOVATION; SETTLEMENT(2), (3). [Cases: Accord and Satisfaction 1. C.J.S. Accord and Satisfaction §§ 2–17, 25–33.]

“ ‘Accord and satisfaction’ means an agreement between the parties that something shall be given to, or done for, the person who has the right of action, in satisfaction of the cause of action. There must be not only agreement (‘accord’) but also consideration (‘satisfaction’). Such an arrangement is really one of substituted performance.” 1 E.W. Chance, Principles of Mercantile Law 101 (P.W. French ed., 13th ed. 1950).

ACCORDANT

accordant (<<schwa>>-kor-d<<schwa>>nt), adj. In agreement <accordant with these principles>.

ACCOUCHEMENT

accouchement (<<schwa>>-koosh-m<<schwa>>nt or ak-oosh-mawn). [French] Childbirth.

ACCOUNT

account, n. 1. ACCOUNTING(3) <the principal filed an action for account against his agent>. — Also spelled (archaically) accompt.

“The action of account lies where one has received goods or money for another in a fiduciary capacity, to ascertain and recover the balance due. It can only be maintained where there is such a relationship between the parties, as to raise an obligation to account, and where the amount due is uncertain and unliquidated.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 56, at 144 (Henry Winthrop Ballantine ed., 3d ed. 1923).

2. ACCOUNTING(4) <the contractor filed an action for account against the nonpaying customer>. 3. A statement by which someone seeks to describe or explain an event <Fred's account of the holdup differed significantly from Martha's>. 4. A detailed statement of the debits and credits between parties to a contract or to a fiduciary relationship; a reckoning of monetary dealings < the trustee balanced the account at the end of each month>. • In wills and estates, an account is a brief financial statement of the manner in which an executor or administrator has performed the official duties of collecting the estate's assets and paying those who are entitled. An account charges the executor or administrator with the value of the estate as shown by the inventory, plus any increase, and credits the executor with expenses and costs, duly authorized disbursements, and the executor's commission. — Abbr. acct.; a/c. — Also termed accounting. See STATEMENT OF ACCOUNT. 5. A course of business dealings or other relations for which records must be kept <open a brokerage account>.

account in trust. An account established by an individual to hold the account's assets in trust for someone else. [Cases: Trusts 34.]

account payable. (usu. pl.) An account reflecting a balance owed to a creditor; a debt owed by an enterprise in the normal course of business dealing. — Often shortened to payable. — Also termed note payable. Pl. accounts payable.

account receivable. (usu. pl.) An account reflecting a balance owed by a debtor; a debt owed by a customer to an enterprise for goods or services. — Often shortened to receivable. — Also termed note receivable. Pl. accounts receivable.

account rendered. An account produced by the creditor and presented for the debtor's examination and acceptance.

account settled. An account with a paid balance.

account stated. 1. A balance that parties to a transaction or settlement agree on, either expressly or by implication. • The phrase also refers to the agreement itself or to the assent giving rise to the agreement.

“An account stated is a manifestation of assent by debtor and creditor to a stated sum as an accurate computation of an amount due the creditor.” Restatement (Second) of Contracts § 282(1)

(1979).

“If a creditor and a debtor wish to compromise or liquidate a disputed or unliquidated debt, they may do so by either a substituted contract or an accord. If, however, their agreement is in the nature of a computation, it is called an account stated. An account stated, then, is a manifestation of assent by both parties to the stated sum as an accurate computation of the debt.” E. Allan Farnsworth, *Contracts* § 4.24, at 286 (1982).

2. A plaintiff's claim in a suit for such a balance. 3. Equity practice. A defendant's plea in response to an action for an accounting. • The defendant states that the balance due on the statement of the account has been discharged and that the defendant holds the plaintiff's release. — Also termed stated account.

accumulated-adjustments account. Tax. An item on the books of an S corporation (usu. an equity item on the corporation's balance sheet) to account for taxable-income items passed through to shareholders, such as accumulated earnings — earned before the corporation converted from a C corporation to an S corporation — that would have been distributed as a dividend to the shareholders if the corporation had remained a C corporation. • One of the theories underlying the accumulated-adjustments account is that the shareholders should not be permitted to avoid dividend-tax treatment on a corporation's accumulated earnings just because the corporation converts from C status to S status. IRC (26 USCA) § 1368(e)(1). — Abbr. AAA. [Cases: Internal Revenue 3896. C.J.S. Internal Revenue §§ 376–377.]

adjunct account. An account that accumulates additions to another account.

annual account. See intermediate account.

assigned account. A pledge of an account receivable to a bank or factor as security for a loan. [Cases: Assignments 10; Pledges 5; Secured Transactions 181. C.J.S. Assignments §§ 19–21; Pledges § 8; Secured Transactions §§ 25, 134–136.]

bank account. A deposit or credit account with a bank, such as a demand, time, savings, or passbook account. UCC § 4-104(a). [Cases: Banks and Banking 151. C.J.S. Banks and Banking §§ 266–268, 277–278.]

blocked account. An account at a bank or other financial institution, access to which has been restricted either by the government or by an authorized person. • An account may be blocked for a variety of reasons, as when hostilities erupt between two countries and each blocks access to the other's accounts. — Also termed frozen account. [Cases: Banks and Banking 128, 151. C.J.S. Banks and Banking §§ 266–268, 270, 277–278, 280–282, 327.]

book account. A detailed statement of debits and credits giving a history of an enterprise's business transactions.

capital account. An account on a partnership's balance sheet representing a partner's share of the partnership capital. [Cases: Partnership 81. C.J.S. Partnership §§ 91, 336, 340.]

charge account. See CHARGE ACCOUNT.

client trust account. See CLIENT TRUST ACCOUNT.

closed account. An account that no further credits or debits may be added to but that remains open for adjustment or setoff.

community account. An account consisting of community funds or commingled funds. See COMMUNITY PROPERTY.

contra account (kon-tr<<schwa>>). An account that serves to reduce the gross valuation of an asset.

convenience account. An apparent joint account, but without right of survivorship, established by a creator to enable another person to withdraw funds at the creator's direction or for the creator's benefit. • Unlike a true joint account, only one person, the creator, has an ownership interest in the deposited funds. Convenience accounts are often established by those who need a financial manager's help and want to make it easy for the manager to pay bills. Although the manager's name is on the account, he or she does not contribute any personal funds to the account and can write checks or make withdrawals only at the direction of or on behalf of the creator.

current account. 1. A running or open account that is settled periodically, usu. monthly. 2. A partner's account that reflects salary, withdrawals, contributions, and other transactions in a given period. 3. Banking. A depositor's checking account. 4. The portion of a nation's balance of payments that represents its exports, imports, and transfer payments.

custodial account. An account opened on behalf of someone else, such as one opened by a parent for a minor child. • Custodial accounts most often arise under the Uniform Transfers to Minors Act (1983). All states have enacted either that act or its earlier version, the Uniform Gifts to Minors Act. Property can be set aside by a donor or transferred to a third party as custodian for the benefit of a minor, usu. as an irrevocable gift. This is a much simpler mechanism than a trust. The custodian has powers and fiduciary duties similar to those of a trustee, except that the custodian is not under a court's supervision. The custodian must account for the property and turn it over to the beneficiary when he or she reaches majority. See UNIFORM TRANSFERS TO MINORS ACT.

deposit account. A demand, time, savings, passbook, or similar account maintained with a bank, savings-and-loan association, credit union, or like organization, other than investment property or an account evidenced by an instrument. UCC § 9-102(a)(29). — Abbr. D.A. [Cases: Banks and Banking 151; Building and Loan Associations 40. C.J.S. Banks and Banking §§ 266–268, 277–278; Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 66, 68, 71–79.]

escrow account. 1. A bank account, generally held in the name of the depositor and an escrow agent, that is returnable to the depositor or paid to a third person on the fulfillment of specified conditions. — Also termed escrow deposit. See ESCROW(2). [Cases: Deposits and Escrows 11–26. C.J.S. Depositaries §§ 4–5, 8–10, 13–25, 27; Escrows §§ 2–15.] 2. See impound account.

frozen account. See blocked account.

impound account.An account of accumulated funds held by a lender for payment of taxes, insurance, or other periodic debts against real property. — Also termed escrow; escrow account; reserve account. See ESCROW(2).

intermediate account.An account filed by an executor, administrator, or guardian after the initial account and before the final account. • This account is usu. filed annually. — Also termed annual account.

joint account.A bank or brokerage account opened by two or more people, by which each party has a present right to withdraw all funds in the account and, upon the death of one party, the survivors become the owners of the account, with no right of the deceased party's heirs or devisees to share in it. • Typically, the account-holders are designated as “joint tenants with right of survivorship” or “joint-and-survivor account-holders.” In some jurisdictions, they must be so designated to establish a right of survivorship. — Abbr. JA. — Also termed joint-and-survivorship account. [Cases: Joint Tenancy 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7–9.]

lien account.A statement of claims that fairly informs the owner and public of the amount and nature of a lien. [Cases: Liens 9; Mechanics' Liens 116. C.J.S. Liens § 10; Mechanics' Liens § 121.]

liquidated account.An account whose assets are clearly ascertained, either by agreement of the parties or by law.

long account.An account involving numerous items or complex transactions in an equitable action, usu. referred to a master or commissioner.

margin account.A brokerage account that allows an investor to buy or sell securities on credit, with the securities usu. serving as collateral for the broker's loan.

multiple-party account.An account that has more than one owner with a current or future interest in the account. • Multiple-party accounts include joint accounts, payable-on-death (P.O.D.) accounts, and trust accounts. Unif. Probate Code § 6-201(5).

mutual account.An account showing mutual transactions between parties, as by showing debits and credits on both sides of the account.

“[E]ach party to a mutual account occupies both a debtor and creditor relation with regard to the other party. A mutual account arises where there are mutual dealings, and the account is allowed to run with a view to an ultimate adjustment of the balance. In order to establish a mutual account, it is not enough that the parties to the account have cross demands or cross open accounts; there must be an actual mutual agreement, express or implied, that the claims are to be set off against each other.” 1 Am. Jur. 2d Accounts and Accounting § 6, at 564 (1994).

mutual-fund wrap account.An investment account that allocates an investor's assets only among mutual funds rather than stocks or other investments. See wrap account.

negotiable-order-of-withdrawal account.See NOW account.

nominal account (nahm-*n*). An income-statement account that is

closed into surplus at the end of the year when the books are balanced.

NOW account (now). An interest-bearing savings account on which the holder may write checks. — Also termed negotiable-order-of-withdrawal account. [Cases: Banks and Banking 151. C.J.S. Banks and Banking §§ 266–268, 277–278.]

offset account. One of two accounts that balance against each other and cancel each other out when the books are closed.

open account. 1. An unpaid or unsettled account. 2. An account that is left open for ongoing debit and credit entries by two parties and that has a fluctuating balance until either party finds it convenient to settle and close, at which time there is a single liability.

partial account. A preliminary accounting of an executor's or administrator's dealings with an estate. [Cases: Executors and Administrators 509(11). C.J.S. Executors and Administrators § 883.]

pay-on-death account. A bank account whose owner instructs the bank to distribute the account's balance to a beneficiary upon the owner's death. • Unlike a joint-and-survivorship account, a pay-on-death account does not give the beneficiary access to the funds while the owner is alive. — Abbr. POD account. — Also termed pay-on-death bank account.

pledged account. A mortgagor's account pledged to a lender in return for a loan bearing interest at a below-market rate. [Cases: Pledges 5. C.J.S. Pledges § 8.]

profit-and-loss account. A transfer account of all income and expense accounts, closed into the retained earnings of a corporation or the capital account of a partnership. [Cases: Corporations 311; Partnership 81. C.J.S. Corporations §§ 505–506; Partnership §§ 91, 336, 340.]

real account. An account that records assets and liabilities rather than receipts and payments.

reserve account. See impound account.

revolving charge account. See revolving credit under CREDIT(4).

running account. An open, unsettled account that exhibits the reciprocal demands between the parties.

sequestered account. An account (such as a joint bank account) that a court has ordered to be separated, frozen, and impounded.

share-draft account. An account that a member maintains at a credit union and that can be drawn on through the use of share drafts payable to third parties. • A share-draft account operates much like a checking account operates at a bank. — Also termed share account. [Cases: Building and Loan Associations 40. C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions § 66.]

suspense account. A temporary record used in bookkeeping to track receipts and disbursements of an uncertain nature until they are identified and posted in the appropriate ledgers and journals. • A suspense account does not appear in a final financial statement. It is a useful tool

when, for example, a lump-sum receipt or expenditure must be broken down to match several transactions before posting.

tax-deferred account. An interest-bearing account whose earnings are not taxable as income to the account holder before the earnings are withdrawn. • Tax-deferred accounts include most types of IRAs, variable annuities, 401(k) plans, cash-value life insurance, and most other types of tax-deferred savings instruments.

trust account. See CLIENT TRUST ACCOUNT.

wrap account. An investment account for which the investor, helped by a stockbroker, selects an account manager and pays a fee based on a percentage of the total assets to be managed. • Most wrap accounts contain a portfolio of investments, including stocks, bonds, and cash. Investors generally provide a risk profile but do not select the investments or give instructions to buy or sell. — Also termed wrap-fee account. See mutual-fund wrap account.

ACCOUNTABLE

accountable, adj. Responsible; answerable <the company was held accountable for the employee's negligence>. — accountability, n.

ACCOUNTABLE RECEIPT

accountable receipt. See RECEIPT.

ACCOUNTANT

accountant. 1. A person authorized under applicable law to practice public accounting; a person whose business is to keep books or accounts, to perform financial audits, to design and control accounting systems, and to give tax advice. • For some purposes, the term includes a professional accounting association, a corporation, and a partnership, if they are so authorized. [Cases: Accountants 1. C.J.S. Accountants § 2.]

certified public accountant. An accountant who has satisfied the statutory and administrative requirements to be registered or licensed as a public accountant. — Abbr. CPA.

2. A defendant in an action of account.

ACCOUNTANT–CLIENT PRIVILEGE

accountant–client privilege. See PRIVILEGE(3).

ACCOUNTANT OF COURT

accountant of court. Scots law. An official of the Court of Session who exercises supervision over the accounts of court-appointed managers and receivers of estates, such as trustees in bankruptcy and guardians of incompetent persons.

ACCOUNTANT'S LIEN

accountant's lien. See LIEN.

ACCOUNT BOOK

account book. A journal in which a business's transactions are recorded. See **SHOP BOOKS**.

ACCOUNT DEBTOR

account debtor. See **DEBTOR**.

ACCOUNT DUTY

account duty. See **DUTY**(4).

ACCOUNT EXECUTIVE

account executive. See **STOCKBROKER**.

ACCOUNT FOR

account for. 1. To furnish a good reason or convincing explanation for; to explain the cause of. 2. To render a reckoning of (funds held, esp. in trust). 3. To answer for (conduct).

ACCOUNTING

accounting. 1. The act or a system of establishing or settling financial accounts; esp., the process of recording transactions in the financial records of a business and periodically extracting, sorting, and summarizing the rec-orded transactions to produce a set of financial records. — Also termed financial accounting. 2. A rendition of an account, either voluntarily or by court order. • The term frequently refers to the report of all items of property, income, and expenses prepared by a personal representative, trustee, or guardian and given to heirs, beneficiaries, or the probate court. See **ACCOUNT**(4). 3. A legal action to compel a defendant to account for and pay over money owed to the plaintiff but held by the defendant (often the plaintiff's agent); **ACCOUNTING FOR PROFITS**. — Also termed account render; account; action of account. 4. More broadly, an action for the recovery of money for services performed, property sold and delivered, money loaned, or damages for the nonperformance of simple contracts. • Such an action is available when the rights of parties will be adequately protected by the payment of money. — Also termed action on account; account; action of book debt. 5. Commercial law. An equitable proceeding for a complete settlement of all partnership affairs, usu. in connection with partner misconduct or with a winding up. See **WINDING UP**. [Cases: Partnership 331. C.J.S. Partnership §§ 387, 391.] 6. Secured transactions. A record that (1) is authenticated by a secured party, (2) indicates the aggregate unpaid secured obligation as of a date no more than 35 days before or after the date of the record, and (3) identifies the components of the obligations in reasonable detail. UCC § 9-102(a)(29). [Cases: Secured Transactions 162. C.J.S. Secured Transactions § 112.]

ACCOUNTING FOR FRUITS

accounting for fruits. Civil law. A claim for the return of natural or civil fruits against an adverse possessor or other person obligated by law or contract to account for fruits. See **FRUIT**(2).

ACCOUNTING FOR PROFITS