

D

D. Roman numeral for 500.

D. A. Abbreviation for district attorney.

d'accroissement. See **droit d'accroissement.**

dacion. (Spanish.) A delivery made in accordance with the terms of a contract.

dacker. A dispute.

dacoity. (India.) A robbery committed by a band composed of five or more persons.

dactylography. The scientific study of fingerprints as a means of identification. *State v Steffens*, 210 Iowa 196, 230 NW 536, 78 ALR 748; *State v Kuhl*, 42 Nev 185, 175 P 190, 36 ALR 1694.

daemon. See **voluntarius daemon.**

dagger. A straight knife; a weapon for stabbing; a generic term covering the dirk, stiletto, and poniard. *People v Ruiz*, 88 Cal App 502, 263 P 836.

dagger-money. Payments of money which were made to the justices of assize on the northern circuit of England as a defense fund against robbers.

daily. On every day; each day.

daily balance. An expression of moment in reference to an interest-bearing bank account, meaning the balance standing in favor of the depositor at the close of business on any day of the interest period, an average being taken of the daily balances for the period in computing the amount upon which interest is to be paid.

daily newspaper. A newspaper published customarily on every day of the week except one, for instance, Sunday or Monday; a newspaper published every day in the week except both Sunday and Monday. 39 Am 1Newsp § 4.

d'ainesse. See **droit d'ainesse.**

daker. Same as **dacker.**

dam. A structure, composed of wood, earth, or other material, erected in and usually extending across the entire channel of a stream at right angles to the thread of the stream, and intended to retard or retain the flow of water. *Morton v Oregon Short Line Railway Co.* 48 Or 444, 87 P 151; the female parent of an equine.

damage. The loss, hurt or harm which results from the injury consequent upon the illegal invasion of a legal right. 22 Am J2d Damg § 1.

Although the words, "damage," "damages," and "injury," are sometimes treated loosely as synonyms, there is a material distinction between them. Injury is the illegal invasion of a legal right; damages is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. 22 Am J2d Damg § 1.

damage by rust. See **rust**.

damage by the elements. Such injuries as result from the operation of the most common destructive forces of nature against which property needs to be protected, the clause being exclusive of direct human agency. *Pope v Farmers Union & Milling Co.* 130 Cal 139, 62 P 384; injuries resulting from sudden, unusual, or unexpected action, as distinguished from gradual changes and decay. *O'Neal v Bainbridge*, 94 Kan 518, 146 P 1165 (damage by fire); *Kirby v Wilie*, 108 Md 501, 70 A 213. Some authorities construe the term as sufficiently broad to include all damage caused by the action of nature, including damage by gradual decay. 32 Am J1st L & T § 795.

damage-cleer. A fee paid into court on the recovery of damages.

damaged. Injured; the equivalent of "taken" under most eminent domain statutes. 26 Am J2d Em D § 158. As applied to property, the word "damaged" imports some disturbance to its intrinsic value; some damage to the property considered as property, and it does not include damages consequential from a wrong done in taking away property and thus rendering its owner unable to realize the real value of property not taken or damaged. *Price v United States*, 174 US 373, 378, 43 L Ed 1011, 1014, 19 S Ct 765. The insertion of the word "damaged," or a similar word in a constitutional provision for compensation has generally been considered necessary to justify an award of damages for the obstruction or diversion of, or other interference with, surface water by a public improvement. But in some cases the word "taking" alone has been construed to require the payment of compensation for damages resulting from such obstruction or interference. Anno: 128 ALR 1196.

damage feasant. Doing damage; the damage caused by trespassing animals.

See **distress damage feasant**.

damage in taking by eminent domain. Physical injury to property not taken caused by any act in the course of the construction of a public improvement which if done by a private individual would give rise to an action at law. *Farnandis v Great Northern Railway Co.* 41 Wash 486, 84 P 18, 21.

damages. The sum of money which the law awards or imposes as pecuniary compensation, recompense, or satisfaction for an injury done or a wrong sustained as a consequence either of a breach of a contractual obligation or a tortious act. 22 Am Rd Damg § 1. The pecuniary compensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. *Aetna Casualty & Surety Co. v Hanna* (CA5 Fla) 224 F2d 499, 53 ALR2d 1125.

See **actual damages; compensatory damages; damage; double damages; exemplary damages; liquidated damages; mitigation of damages; nominal damages; punitive damages; speculative damages.**

damages and costs. As the phrase appears in an appeal bond, it binds the appellant to answer for the judgment, including interest. 5 Am J2d A & E § 1060.

damages at large. An award for which there is no monetary standard of computation, such as damages for pain and suffering. *Broughel v Southern New England Tel. Co.* 73 Conn 614, 621.

damages for delay. As the term appears in a supersedeas bond, such damages arising from the delay caused by the appeal as may properly constitute legal damages to the party delayed. 5 Am J2d A & E § 1058; the damages recoverable for a carrier's

delay in transporting and delivering goods. 13 Am J2d Car § 377; the damages recoverable for a contractor's delay in performance. 13 Am J2d Bldg Contr § 76; 22 Am J2d Damg § 49; interest allowed for delay in payment of compensation for property taken under power of eminent domain. 27 Am J2d Em D § 297.

damages for loss of use. See **usable value**.

damage to the person. Personal injury. There is a difference of opinion on the question whether a statute providing for the survival of an action for injury to the person, after the death of the injured person, includes an action for an injury to the feelings or sensibilities. 1 Am J2d Abat & R § 68.

damage without wrong. Loss or harm resulting to a person which is not the result of the violation of a legal duty. 22 Am J2d Damg § 1. The practical sense of the expression is that there is no cause of action. 1 Am J2d Actions § 70.

dame. The wife of a baronet.

damn. To condemn; to deem, think or judge anyone to be guilty or to be criminal; to give judgment, or sentence, or doom of guilt; to adjudge, or declare the penalty or punishment. *Blaufus v People*, 69 NY 107, 111.

damna. Damages.

damnatus. Condemned; sentenced; declared to be guilty; illegal.

damned rascal. See **rascal**.

damnify. To injure; to cause loss or damage.

damni injuriae actio. (Roman law.) An action for intentional injury to the beast of another.

damno. See **in damno**.

damnosa haereditas. An encumbered inheritance.

damnum. A species of loss.

See **ad quod damnum**; **damage**.

damnum absque injuria. Damage without wrong, the sense of the expression being that there is no cause of action. 1 Am J2d Actions § 78.

The phrase applies where an accident occurs and no fault or negligence is chargeable to either of the parties to the occurrence, as where the accident was inevitable or is properly characterized as an act of God. 38 Am J1st Negl § 4. A legal right must be violated in order that an action of tort may be maintained. The mere fact that a complainant may have suffered damage of the kind which the law recognizes is not enough. There must also have been a violation of a duty recognized by law. "Damnum" is not enough; there must also be "injuria." The maxim comes from the civil law. *West Virginia Transp. Co. v Standard Oil Co.* 50 W Va 611, 40 SE 591.

Damnum absque injuria esse potest. There can be loss or damage without the violation of a legal right. One cannot always look to others to make compensation for injuries received, since many accidents occur, the consequences of which the sufferer must bear alone. To warrant the recovery of damages in any case, there must be a right of action for a wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. 1 Am J2d Actions § 70; 22 Am J2d Damg § 1.

damnum et injuria. Loss and wrong, the two elements which must exist in combination as essentials of a cause of action. 1 Am J2d Actions § 70.

damnum fatale. By the Roman law, an innkeeper was accountable for the value of property intrusted to his charge, though the loss occurred or the thing perished without his fault unless it happened damno fatale, or by the act of God. Under the term damnum fatale, the civilians included all those accidents which are summed up in the common-law expressions "act of God," or "public enemies," though perhaps it embraced some more which would not now be admitted as occurring from an irresistible force. Thickstun v Howard (Ind) 8 Blackford 535, 536.

damnum infection. Threatened damage or loss.

damnum rei amissae. A loss suffered through making a payment by mistake of law.

damnum sine injuria. Loss or damage without the violation or infringement of a legal right. Such damage or loss can impose no liability on a defendant. Kingsley v Delaware, Lackawanna & Western R. Co. 81 NJL 536, 80 A 327.

See **damage without wrong; damnum absque injuria.**

Damnum sine injuria esse potest. There can be loss or damage without the violation of a legal right.

damp. See **black damp.**

dance. A recreation, also an art, in which the body, particularly the feet, sometimes the hands, move in rhythm and to music; a party at which the guests dance; a display of emotion, particularly of joy, sometimes of pain.

dance hall. A place for public dancing, that is a place to which the public is admitted for dancing. Bungalow Amusement Co. v Seattle, 148 Wash 485, 269 P 1043, 60 ALR 166; a public hall primarily and predominantly, although not necessarily, exclusively devoted to dancing. Anno: 48 ALR 147, s. 60 ALR 173.

Construed in accordance with ordinary usage of the term, a "dance hall" is a place maintained for promiscuous and public dancing, admission to which is not based upon personal selection or invitation. 4 Am J2d Amuse § 3.

dance house. Same as **dance hall.**

dancing school. A place for instruction in dancing and etiquette, particularly the etiquette of the dance.

dandy-note. An English customs permit authorizing the removal of goods from a warehouse.

danegelt. Dane-gold,—an ancient annual tax levied in England to provide funds for warfare with the Danes.

danelage. Also written Dane-lage. The Danish law which was one of the three principal systems of laws at the beginning of the eleventh century. It was principally maintained in certain of the midland counties of England and also on the eastern coast, the part most exposed to the visits of pirates. See 1 Bl Comm 65.

[305]

danelaw. Same as **danelage.**

danger. Peril; a likelihood of injury; a relative term, since all life is to some extent a surmounting of peril. In the general law of negligence it includes such contingent harm or injury as reasonable prudence ought to foresee and provide against, as probably

in prospect. *Drennen Co. v Jordan*, 181 Ala 570, 983, 61 So 938, 23 ALR 981; an ancient duty which the tenant paid for leave to till the soil at certain seasons.

dangerous. Unsafe; perilous; having at least some element of danger.

See **imminently dangerous; inherently dangerous.**

dangerous agency. See **dangerous instrumentality.**

dangerous instrumentality. A basis for liability without fault in respect of injury to adjoining property or to persons upon adjoining property. 1 Am J2d Adj L § 11; a term of moment in reference to liability of an owner or possessor for negligence. 38 Am J1st Negl § 85; also, a term of practical application in considering the absolute liability of an employer for an injury inflicted upon a third person by an instrumentality in the hands of an employee. The term has reference to appliances or things dangerous in themselves, inherently dangerous. 35 Am J1st M & S § 547; 38 Am J1st Negl § 85. Only where a "dangerous agency" amounts to a nuisance, and is unnecessary under the existing social conditions, may the employer be held absolutely liable for injuries resulting from its use by an employee. 35 Am J1st M & S § 547.

dangerous per se. Instrumentality is "dangerous per se" if it may inflict injury without the immediate application of human aid. *Southern Cotton Oil Co. v Anderson*, 80 Fla 441, 86 So 629, 16 ALR 255.

dangerous premises. Grounds upon which there are pitfalls or hidden sources of danger to a pedestrian. 38 Am J1st Negl § 96.

dangerous weapon. An instrument which, when used in the ordinary manner contemplated by its design and construction, will, or is likely to, cause death or great bodily harm. *Barboursville ex rel. Bates v Taylor*, 115 W Va 4, 174 SE 485, 92 ALR 1093.

Whether an unloaded firearm is to be considered a dangerous weapon depends ordinarily upon the manner in which the instrument is used or attempted to be used, whether as a firearm or as a bludgeon. 56 Am J1st Weap § 4.

dangers of lake navigation. All the ordinary perils which attend navigation on the Great Lakes, and among such perils, that which arises from shallowness of the waters at the entrance of harbors formed from them. *Tyler v Defrees (US)* 11 Wall 129, 20 L Ed 160.

dangers of navigation. Those perils incident to a lawful course of navigation conforming to public regulations of which the vessel must take notice; natural accidents, peculiar to the sea, which do not happen by the intervention of man and are not preventable or avoidable by human prudence. The term is broader than acts of God and includes many accidents peculiar to navigation on the sea which would not come within that term. 48 Am J1st Ship § 454.

See **dangers of the sea; perils of the sea.**

dangers of the river. A term analogous to and of like import with "perils of the sea," including risks arising from natural accidents peculiar to the river, canal or lake, which do not happen by the intervention of man and are not to be prevented by human prudence, and has been extended to cover losses arising from some irresistible force or overwhelming power which no ordinary skill could anticipate or evade. 48 Am J1st Ship § 455.

dangers of the sea. Perils of the sea, denoting natural accidents peculiar to the sea which do not happen by the intervention of man and are not to be prevented by the prudence of man. 48 Am J1st Ship § 454. Capture and plundering by pirates have been deemed included within the term as an exception to the general limitation to natural occurrences. *Jones v Pitcher (Ala)* 3 Stew & P 135.

See **perils of the sea.**

danger trees. Trees standing adjacent to the right of way of an electric power transmission line which, by reason of their size or condition involve a concrete threat of injury to the line. 26 Am J2d Electr § 146.

danism. A usurious loan.

dano. (Spanish.) Damage.

dans. In; within.

dans et retinens, nihil dat. A person who gives and retains possession, gives nothing.

dapifer. A court officer whose functions were those of a steward.

darbies. Handcuffs.

dare. To give; to transfer; to convey; to risk; to hazard.

dare ad remanentiam. To convey in fee simple.

dareyne. Same as **darrein.**

dark. Noun: The period of time after nightfall. Adjective: An absence or deficiency of light, as in the nighttime or after nightfall. *Wichita Falls & NW Ry. Co. v Woodman*, 64 Okla 326, 168 P 209.

Darnell's Case. A celebrated English case, decided in 1627, which sustained the refusal of the defendant to subscribe to a forced loan.

darraign. Same as **deraign.**

darrein. Last.

darrein continuance. The last continuance.

See **puis darrein continuance.**

darrein presentment. Last presentation; this was a writ or assize which lay when a man, or his ancestor, under whom he claimed, had presented a clerk to a benefice, who was instituted, and later a stranger presented a clerk, and thereby disturbed the real patron. The writ directed the sheriff to summon an assize or jury to determine who was the last patron, and upon their finding, a writ issued to the bishop to institute the clerk of the proper patron. See 3 Bl Comm 245.

darrein seisin. The name of a form of plea which might be interposed by the tenant in his defense against a writ of right, and whereby the tenant alleged title and seisin to be in himself as against the demandant. *Hunt v Hunt*, 44 Mass (3 Met) 184.

Dartmouth College Case. A very celebrated case—*Dartmouth College v Woodward* (US) 4 Wheat 518, 4 L Ed 629, decided by the United States Supreme Court in 1819, announcing the doctrine that a grant of corporate powers by the sovereign

to an association of individuals for public use constitutes a contract within the meaning of the Federal Constitution prohibiting state legislatures from passing laws impairing obligations of contract. 36 Am J2d Franch § 6.

data. Collected information; known facts. Plural of **datum**.

date. The time of an occurrence or happening; an indication of time, as upon a coin or an instrument. The date of a written instrument means the year, month, and day of its execution. Estate of Carpenter, 172 Cal 268, 156 P 464. The word is frequently used to designate the actual time when an event takes place; but as applied to written instruments, its primary signification is the time specified therein. This is the meaning which its derivation from the Latin "datus," meaning "given," most naturally suggests. This primary meaning is not time in the abstract, nor time taken absolutely, but, as its derivation indicates, it is the time given or specified—time in some way ascertained or fixed. The date of a deed is not the time when it was actually executed, but the time of its execution, as given or stated in the deed itself; the date of a charge in an account not necessarily the time when the article charged was actually furnished, but the time given or set down in the account in connection with such charge. Mutual Life Ins. Co. v Hurni Packing Co. 263 US 167, 174, 68 L Ed 235, 44 S Ct 90, 31 ALR 102, 107.

date certaine. (French.). The date of the recording of an instrument.

date of adjudication in bankruptcy. The date of the filing of any petition which operates as an adjudication, or the date of entry of a decree of adjudication, or, if such decree is appealed from, then the date when such decree is finally confirmed or the appeal is dismissed. Bankr Act § 1(12); 11 USC 1(12); 9 Am J2d Bankr § 264.

date of issue. An arbitrary date fixed, as the beginning of the term for which notes and bonds of a series are to run, without reference to the precise time when convenience or the state of the market may permit of their sale or delivery. Yesler v Seattle, 1 Wash 308, 322, 25 P 1014, 1019; an arbitrary date noted in an insurance policy, rather than the date of execution or delivery. 29 Am J1st Ins § 518.

date of judgment. The date of rendition of the judgment which is the day when the judgment is signed by the judge and filed with the clerk of court. Bell v McDermoth, 198 Cal 594, 246 P 805. Such is the date of the judgment from the standpoint of the judicial act in the rendition of a judgment. Clerical acts in entry, docketing, and spreading the judgment upon the records of the court, requisite in giving a judgment full effect, are subsequent to the rendition. 30A Am J Rev ed Judgm §§ 91 et seq.

date of publication. For the purpose of determining the duration and expiration of a copyright, the "date of publication" is the earliest date when copies of the first authorized publication are placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority. 17 USC § 26.

See **publication date**.

date wanted—as desired. A usual stipulation in mercantile agreements, the equivalent of on demand. Tampa Shipbuilding & Engineering Co. v General Constr. Co. (CA5 Fla) 43 F2d 309, 85 ALR 1178.

datio. Same as **datation**.

datio in adoptionem. (Roman law.) Given in adoption. Adoption is either arrogatio, when a man in his own right (homo sui juris) is adopted or datio in adoptionem, when a filius familias of him who has such person in his power is given to another for adoption. See Mackeldey's Roman Law § 592.

datio in solutum. An accord and satisfaction under the civil law, wherein the payment was made in property and not in money.

datation. A giving or transfer in the fulfillment of a duty; an appointment, as to an office.

dation en paiement. A proceeding under the law of Louisiana whereby a debtor conveys property to his creditor, and the creditor accepts the conveyance as payment of the debt. *Bradley v Claflin*, 132 US 379, 385, 33 L Ed 367, 370, 10 S Ct 125.

datave. That which a person may give or appoint to at will, as an office; given or appointed.
See **decree datave.**

datave curatorship. See **datave tutorship.**

datave tutorship. Also called "datave curatorship," –a tutorship or curatorship which is conferred by a family meeting on a person having charge of a minor, or of an interdict. *Interdiction of Bothick*, 43 La Ann 547, 9 So 477.

Da tua dum tua sunt, post mortem tunc tua non sunt. Give that which is yours while it is yours; after death it is not yours.

datum. That which is delivered; executed; a date.

datur digniori. It is given to the more worthy.

d'aubaine. See **droit d'aubaine.**

daughter. A girl or woman who is the child in a parent and child relationship; a word which is not a technical legal term having a fixed and definite meaning, but one which is flexible and subject to construction to give effect to the intention of the maker of the instrument in which it appears. *Conner v Gardner*, 230 Ill 258, 82 NE 640. The designation "daughter" appearing in a will may serve to indicate the inclusion of an illegitimate child of the testator among his beneficiaries. 10 Am J2d Bast § 141.

dauphin. The eldest son of the king of France was so called.

Davies v Mann. A celebrated English case reported in 10 Mees & W 546, 152 Eng Reprint 588, 19 ERC 190, to which the origin of the rule of last clear chance is traced. The case is often referred to as the Donkey Case because it was a donkey which was injured by the defendant's act.

Davis-Bacon Act. A federal statute with minimum wage provisions in reference to employees of contractors engaged in federal public works. 40 USC § 276a.

Davis Case. A leading case in reference to the validity of a foreign divorce. *Davis v Davis*, 305 US 32, 83 L Ed 26, 59 S Ct 3, 118 ALR 158.

day. A manifestation of the natural phenomena of the rotation of the earth. 29 Am J2d Ev § 100; a division of time, consisting of twenty-four hours,

[307]

the period which elapses while the earth makes a complete revolution on its axis, running from midnight to midnight. *State ex rel. State Pharmaceutical Association v Michel*, 52 La Ann 936, 27 So 566.

See **calendar day; fraction of a day.**

day-book. An account-book of original entry in which transactions are set down as they occur.

daybreak. The dawn or first appearance of light in the morning. *Sullivan v Chicago City R. Co.* 167 Ill App 152.

day burglary. A statutory offense sometimes called daytime burglary, the distinctive element being the commission of the offense in the daytime. 13 Am J2d Burgl § 23.

day in court. A phrase meaning nothing less than due process, that is the right to, and opportunity for, a hearing. 16 Am J2d Const L § 569. A "day in court" means an opportunity to be heard after notice to appear, and is denied a corporation where no officer or agent bearing the duty to defend actions is given notice of the pending action until after judgment. *Townsend v Carolina Coach Co.* 231 NC 81, 56 SE2d 39, 20 ALR2d 1174.

It is sufficient if the record shows that the parties might have had their controversies determined according to their respective rights if they had presented all their evidence and the court had applied the law. *Olsen v Muskegon Piston Ring Co.* (CA6 Mich) 117 F2d 163.

day laborer. A person employed by the day to perform manual labor. *Briscoe v Montgomery & Co.* 93 Ga 602.

daylight. The natural light of daytime; dawn; daylight.

See **de die claro.**

daylight saving time. Time advanced for the purpose of taking advantage of the longer periods of daylight during the summer months. 52 Am J1st Time § 4; achieved by advancing clock or other timepiece one hour; prevailing from the last Sunday of April at 2 A. M. to the last Sunday of October at 2 A. M. under Act of Congress, for all states, the District of Columbia, and possessions of the United States, except as any state may exempt itself by statute from using such time.

day of 24 hours. A period designated for the purpose of expressing with certainty and precision the exact period during which the capacity of a distillery for production is to be ascertained or fixed for tax purposes. *Chicago Distilling Co. v Stone*, 140 US 647, 35 L Ed 532, 11 S Ct 862.

day-rule. An order of court permitting a prisoner to spend a day out of prison.

days in bank. Days set by law for the return of writs or for the appearance in court of the parties served; default day.

daysman. An arbiter.

days of grace. An additional three days following the date specified for payment in a negotiable instrument, allowed the obligor under the rule of law merchant and perhaps in a very few states, although not in respect of checks. *Bull v First Nat. Bank*, 123 US 105, 31 L Ed 97, 8 S Ct 62; an allowance of three days to the debtor to make payment, beyond the time at which by the terms of the contract, it becomes due and payable. *Bell v First Nat. Bank*, 115 US 373, 29 L Ed 409, 6 S Ct 105; an extended period, usually 30 days, under statute or contractual provision, for the payment of premiums under a life insurance policy. 29 Am J Rev ed Ins § 519; additional opportunity to obey appellate court order. 4 Am J2d A & E § 238.

day's work. The number of hours, as prescribed by statute, constituting a lawful day's work, unless otherwise agreed by the parties. 31 Am J Rev ed Lab § 780.

Such statutes are to be distinguished from those which limit absolutely the length of a working day.

In underground metal mining, the workday starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift. It also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out, but it does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground. *MeWhirter v Otis Elevator Co.* (DC SC) 40 F Supp 11.

See **hours of labor; Portal to Portal Pay Act.**

daytime. The period of daylight, commencing before sunrise and continuing a while after sunset, during which it is possible to discern the face of a person or object by natural light. 13 Am J2d Burgl §§ 23, 24.

daytime burglary. See **day burglary.**

daywere. A quantity of land which could be ploughed in one day.

day-writ. Same as **day-rule.**

dazzling light. In reference to automobile headlights, high, as opposed to low, headlight beams. People v Meola, 7 NY2d 391, 198 NYS2d 276, 165 NE2d 851.

D. B. Abbreviation of **Domesday Book.**

d. b. e. An abbreviation of **de bene esse.**

d. b. n. An abbreviation of **de bonis non.**
See **administrator d. b. n.**

D. C. Abbreviation of district court also of District of Columbia, and of Doctor of Chiropractic.

D. C. L. Letters representing the university degree of "doctor of civil law."

dd. Abbreviation of delivered.

d. d. An abbreviation of "days after date."

D. D. Abbreviation of demand draft and of Doctor of Divinity.

D. D. S. Abbreviation of Doctor of Dental Science.

D. E. Abbreviation of Doctor of Engineering.

de. (French and Latin.) From; of; concerning; among.

deacon. The assistant of a priest or other clergyman. In some Protestant denominations, a member of the governing board of a church or congregation.

de acquirendo rerum dominio. Of acquiring the control of things.

dead. Without life; of no effect.

dead animal. A carcass which in some way endangers the public health or contributes to the discomfort of the populace. Anno: 121 ALR 743, 747.

dead beat. (Slang.) Noun: A person who does not pay his bills and has no property out of which the

bills can be collected under process. Adjective: Exhausted.

dead body. The corpse of a human being. A dead animal.

dead-born. Born dead; stillborn.

dead freight. A shipping term used to denote the compensation payable to a shipowner when the charterer under a contract of affreightment has failed to ship a full cargo; that is, compensation for the loss sustained by the shipowner by reason of the charterer's failure to deliver the agreed quantity of cargo. *California & Eastern S.S. Co. v 138,000 Feet of Lumber* (DC Md) 23 F2d 95, 97.

dead hand. Control from the grave by a blind observance of principles and practices enunciated and developed by persons long since dead; holding property out of the channels of commerce and industry.

See **in mortua manu; mortmain.**

deadhead. A term applied to persons other than the president, directors, officers, agents or employees of a railroad company, who are permitted by the company to travel on the road without paying any fare therefor. *Gardner v Hall*, 61 NC 21, 22.

deadhead message. A telegram which is usually marked "d. h.," and is sent without charge. *Connelly v Western Union Tel. Co.* 100 Va 51, 40 SE 618.

dead letter. A law which is not enforced; an undelivered letter which has been sent to the dead letter office by the post office department to be destroyed.

deadline. A point of time, day, hour, or minute, as of which an act shall be performed, such as filing a claim or producing an article for publication in a specific issue of a newspaper or periodical; a line which a prisoner may not cross without exposing himself to gunfire.

See **midnight deadline.**

deadlock. An even division of the directors of a corporation in voting. 19 Am J2d Corp § 1129; an even division of members of an administrative agency on a particular question. 2 Am J2d Admin L § 198.

See **equally divided court.**

deadly. See **mortal.**

deadly weapon. An instrument which is likely to or which will cause or produce death or great bodily harm when used in the manner contemplated by its design and construction. *Barboursville ex rel. Bates v Taylor*, 115 W Va 4, 174 SE 485, 92 ALR 1093; 26 Am J1st Homi § 7; 56 Am J1st Weap § 2.

Whether an unloaded firearm is to be considered a deadly weapon depends ordinarily upon whether the manner in which the instrument is used or attempted to be used, whether as a firearm or a bludgeon. 56 Am J1st Weap § 4.

dead man's part. That portion of the personal property of a married man of which he could lawfully dispose by will to the exclusion of his widow and his children.

de admeasurement. For admeasurement; for adjustment or settlement.

de admeasurement dotis. A writ for the admeasurement of dower, which lay where more land had been assigned to a widow as dower than she ought legally to have. This might occur where a minor heir or his guardian had made the excessive assignment. See 2 Bl Comm 136.

de admittendo clerico. A writ commanding a bishop to admit to a living a clergyman who had been regularly appointed thereto.

dead pay. The pay or wages of dead soldiers and sailors which have been wrongfully collected from the government after their death.

dead pledge. A mortgage; the property mortgaged.

It was called a "dead" pledge because the rents and profits of it did not go toward the discharge or payment of it. Hence, it yielded nothing to the mortgagee and was, in that sense, dead.

dead rent. A rent reserved in the lease of mining property in addition to royalties.

dead's part. Same as **dead man's part.**

dead storage. The storage of goods wherein they come to rest for safekeeping. *Tipp v District of Columbia*, 69 App DC 400, 102 F2d 264. In "dead storage" of a motor vehicle, the battery is removed, so that the vehicle can not be moved under its own power.

dead use. A future use.

dead vessel. A ship permanently withdrawn from use for navigation purposes. 2 Am J2d Adm § 31.

de advisamento consilii nostri. By the advice of our counsel.

dead wall. A term common to building regulations, meaning a solid wall, that is a wall without openings. 13 Am J2d Bldgs § 28.

deadwoods. See **buffers.**

de aequitate. In equity.

de aetate probanda. For proving age,—a writ which lay to determine the time of the majority of the infant heir of a tenant in capite.

deaf, dumb, and blind. The common law regarded a man who was born deaf, dumb and blind as being in the same state with an idiot, because being deemed incapable of understanding, he was supposed to be lacking in all those senses which furnish the human mind with ideas. See 1 Bl Comm 304. Such concept is negated absolutely by the remarkable achievements which have been accomplished in modern times by persons working under the handicap of the combination of such infirmities. 29 Am J Rev ed Ins Per § 4. One of our finest minds is that of Helen Keller.

deafforest. To take from a forest its character as a forest, and thus to remove it from the operation of the forest laws.

deaf mute. A person who can neither hear nor speak.

See **deaf, dumb, and blind.**

deal. Verb: To transact business; to be concerned with a person or a thing. *State v Morrow*, 313 Mo 114, 125, 280 SW 697; to buy or to sell. *Commonwealth v Silverman*, 220 Mass 552, 108 NE 358; to distribute the cards to the players in a card game; Noun: A transaction; a bargain; an arrangement to attain a desired result. *Reynolds v Pray*, 148 Iowa 213, 127 NW 50; a secret arrangement, especially in politics, whereby support is given on promise of future favors. *Oregon Home Builders v Montgomery Invest. Co.* 94 Or 349, 184 P 487; the playing of one hand of cards around in a card game.

de aleatoribus. Concerning gamblers.

[309]

dealer. One who buys and sells any commodity, such as grain, sugar, wheat etc. *Gibson v Bolner*, 165 Ohio St 357, 59 Ohio Ops 467, 135 NE2d 353; a person who buys and sells at a place of business rather than from house to house as a peddler. 40 Am J1st Ped § 3; one who sells goods substantially in the form in which they are bought, and who has not converted them into another form of property by his own skill and labor. 51 Am J1st Tax § 320.

dealer in lands. See **land jobber**.

dealer in liquor. A person who buys and sells liquor or buys it with the intention of selling it. 30 Am J Rev ed Intox L § 217.

dealer in narcotics. One who sells narcotics promiscuously, and who is ready or willing to sell to anyone who applies to purchase. *Taylor v United States (CA8 Mo)* 19 F2d 813.

dealer in securities. A merchant of securities with an established place of business, regularly engaged in the purchase of securities and their resale to customers. Internal Revenue Code § 1236(c); *Helvering v Fried*, 299 US 175, 81 L Ed 104, 57 S Ct 150; one who engages in repeated and continuous transactions in securities, as distinguished from a person who buys or sells only occasionally. 47 Am J1st Secur A § 21.

dealer's policy. An automobile insurance policy which covers the risk or risks of an automobile dealer. 7 Am J2d Auto Ins §§ 43, 73, 96, 97.

dealer's talk. See **puffing**.

dealing. Buying and selling. The word is often used as equivalent in meaning to the word "trading." *Fleckner v Bank of United States (US)* 8 Wheat 338, 352, 5 L Ed 631, 634; acting as dealer in a card game.

See **dealer; trading**.

dealing in futures. See **futures**.

dealing off the cuff. A slang term for acting without sufficient forethought.

de allocatione facienda. For making an allowance,—an old English writ to compel the lord treasurer and barons of the exchequer to make allowances to certain government officers for payments made by them.

de alto et basso. From top to bottom; fully; completely; in all particulars. The phrase may be compared with the nautical expressions "from stem to stern," "from stem to gudgeon."

de ambitu. Concerning bribery. Under the Julian law a person convicted of corruption at an election was fined and adjudged infamous, but if he thereafter convicted another offender, his credit was restored. See 1 Bl Comm 179, footnote.

dean. The title of an ecclesiastical officer; the president of a bar association; an honorary title given to the oldest member of a profession or trade in a particular place.

dean and chapter. The council of a bishop, to assist him with their advice in religious matters, and also in the temporal affairs of his see. See 1 Bl Comm 382.

deanery. See **Archdeanery.**

de annua pensione. Of annual pension,—an old English writ to compel an abbot or prior to make payment of pension money due the king from the abbey or priory.

de annuo redditu. An old English writ which lay to recover an annuity.

dean of the arches. The chief judicial officer of the archbishop of Canterbury.

de apostata capiendo. For taking an apostate,—an old English writ for the arrest of a religious officer who had abandoned his post.

de arbitracione facta. For making an arbitration,—an old English writ to restrain an action based on a claim which had been submitted to arbitration.

de arrestandis bonis ne dissipentur. For the seizure of goods lest they disappear,—an old English writ for the seizure of goods taken by a person who might leave the owner without a remedy.

de arrestando ipsum qui pecuniam recepit. For arresting him who had received money,—an old English writ for the arrest of a deserting soldier who had received his pay.

de arte et parte. Of art and part.

De Asportatis Religiosorum. Concerning the asportations of religious persons,—the title of a statute of 35 Edward the First, the purpose of which was to curb the acquisitions of the church.

de assissa mortis antecessoris. Concerning the assize of the death of an ancestor.

de assissa proroganda. For postponing the assize,—a writ to postpone the issue of an assize during the absence in war of one of the parties to the action.

death. The end of life; the state of being dead.

See **civil death.**

death acts. Statutes permitting civil actions for death caused by wrongful act. 22 Am J2d Dth § 2.

See **wrongful death.**

deathbed expenses. The expenses of a person's last illness.

death by accident. See **accident.**

death by accidental means. See **accidental means.**

death by his own hand. A synonym of suicide. 29A Am J Rev ed Ins § 1145. The expression does not include death by accident; there must be an intent to commit suicide. Such an intent, however, may be present even while the assured is in a state of intoxication. *Equitable Life Assur. Soc. v Paterson*, 41 Ga 338.

death by natural cause. See **natural death**.

death by poison. See **poison; poisoning**.

death by wrongful act. See **wrongful death**.

death certificate. The official proof of death, issued on the showing made by an official registry kept pursuant to law. 22 Am J2d Dth § 302.

death duties. Another term for inheritance or estates taxes. 28 Am J Rev ed Inher T § 3; duties which are not a tax upon property *eo nomine*, but upon its passage by will or by descent in cases of intestacy, as distinguished from taxes imposed on property real or personal, as such, because of its ownership or possession. In other words, the public contribution which death duties exact is predicated on the passing of property as the result of death,

[310]

as distinct from a tax on property disassociated from its transmission or receipt by will, or as the result of intestacy. *Knowlton v Moore*, 178 US 41, 44 L Ed 969, 20 S Ct 747.

See **estate taxes; inheritance taxes**.

death from. See phrases beginning **death by**.

Death on High Seas Act. A federal statute which applies to death caused by wrongful act, including neglect or default, on the high seas more than a marine league from the United States, and authorizes suit for damages in an admiralty court, by the personal representatives of the decedent and for the personal benefit of the decedent's wife, husband, parent, child, or dependent relative. 46 USC § 761; 2 Am J2d Adm § 130.

death penalty. The extreme penalty for the commission of a crime, to be executed within the manner provided by statute, such as hanging, electrocution, or asphyxiation by gas. There is a definite legislative trend toward the abolition of the death penalty, either absolutely or subject to few exceptions.

death sentence. See **death penalty**.

deathsmen. An executioner; a person who executes the death penalty for a capital offense.

death's part. Same as **dead man's part**.

death taxes. Another term for inheritance or estate taxes. 28 Am J Rev ed Inher T § 3.

See **death duties**.

deathwarrant. The warrant or order of a court commanding the execution of a sentence to death.

death without issue. See **die without issue**.

deathwound. A fatal wound.

de attornato recipiendo. For receiving an attorney,—a writ to compel the judges to receive an attorney of a party to an action pending before them.

de audiendo et terminando. To hear and determine; a writ directing commissioners to try and decide certain cases assigned to them.

de averiis captis in withernam. Same as **averiis captis in withernam.**

de averiis retornandis. For returning cattle,—a writ for the seizure of the cattle of a person in the place of other cattle which he has wrongfully driven away.

de avo. From the grandfather, —a writ whereby an heir secured land entered by a stranger on the day of the death of the heir's grandfather, who had died seized of it. See 3 Bl Comm 186.

deawarren. To break up and discontinue or abandon a warren.

debar. To cut off from entrance; to preclude; to hinder from approach, entry or enjoyment; to shut out or exclude. *Printup v Alexander & Wright*, 69 Ga 553, 556.

debas. Below.

debase. To adulterate.

debasement coin. Reducing the standard of quality by increasing the percentage of alloy.

debatable land. Land lying near the boundary between England and Scotland which at one time was claimed by each of them.

debauched. Carnally known. 47 Am J1st Seduc § 6.

debauchery. An excessive indulgence of the body; licentiousness; drunkenness; corruption of innocence; taking up vicious habits; sometimes defined as sexual immorality, where appearing in a statute. *Athanasaw v United States*, 227 US 326, 57 L Ed 528.

debauchery and immoral purpose. As these terms are used in the White Slave Traffic Act, by association with the term prostitution, they have been restricted in meaning to immorality consisting of sexual debauchery, and as thus limited by judicial decisions the language of the statute furnishes a sufficiently definite description of the condemned conduct. *United States v Lewis* (CA7 Ind) 110 F2d 460.

debauchment. A debauching or being debauched; sometimes defined as seduction. *Reutkemeier v Nolte*, 179 Iowa 342, 161 NW 290.

de bene esse. Of present, temporary validity; for what it is worth; conditionally; provisionally; subject to a defeasance of condition subsequent.

See **deposition de bene esse.**

debent. They owe.

debenture. A voucher for an indebtedness; a corporate bond, often unsecured, in other instances secured by a pledge of income only.

See **mortgage debentures.**

debet. He owes; he ought.

debet esse finis litium. There ought to be an end of a litigation.

debet et detinet. He is indebted and he withholds. A writ of debet was said to be brought in the debet and detinet, or in the detinet only; that is it alleged that the defendant owed the debt and withheld it, or simply that he withheld or detained it. If the original creditor sued the original debtor, or sued the original debtor's heirs upon an obligation binding on them, the writ was brought in debet and detinet, but otherwise only in detinet, for the reason that a simple duty to pay a debt was purely personal and died with the debtor unless his heirs were bound. See 3 Bl Comm 155.

debet et solet. He ought and has been accustomed.

Debet quis juri subjacere ubi delinquit. A person ought to be subject to the law of the place where he commits an offense.

Debet sua cuique domus esse perfugium tutissimum. Each man's home should be a very safe refuge. "The law has a tender regard for the asylum of a private dwelling." Clason v Shotwell (NY) 12 Johns 31, 54.

de bien et de mal. For good and evil.

See **de bono et malo.**

de biens le mort. Of the goods of the deceased.

De Bigamis. An English statute passed in 1276, declaring what should be the force and effect of certain words in a deed.

Debile fundamentum, fallit opus. When the foundation is weak, the structure falls. "Justice does not allow

[311]

one to profit by his own iniquity." Anderson & Co. v Stapel, 80 Mo App 115, 122.

debit. Verb: To charge. Noun: Whatever is charged as due or owing.

debita. Debts.

debita fundi. Debts which were secured by real property.

debita laicorum. Debts of the laity, as distinguished from debts of the clergy which were not recoverable in the civil courts.

Debita sequuntur personam debitoris. Debts follow the person of the debtor.

debito. See **de debito.**

debito justitiae. See **ex debito justitiae.**

debito naturali. See **ex debito naturali.**

debitor. One who owes; a debtor.

Debitor creditoris est debitor creditori creditoris. The debtor of the creditor is also the debtor of the creditor's creditor. "This process of attachment went not only against those in the actual possession of himself, his factors or agents, but also against those in the hands of his debtors, since the maxim taken from the Justinian code was 'Debitor creditoris,' " etc. *Atkins v Fiber Disintegrating Co.* (US) 18 Wall 272, 21 L Ed 841, 845.

debitores in solido. Joint debtors.

Debitor non praesumitur donare. A debtor is not presumed to make gifts.

Debitorum pactionibus, creditorum petitio nee minui potest. The rights of creditors to sue cannot be prejudiced by agreements between their debtors.

debitrix. A woman who owes money.

debitum. A debt.

debitum et contractus sunt nullius loci. Debt and contract are of no place,—expressing a rule of the common law that actions arising out of contract are transitory in character regardless of the place where the contract was executed or was to be performed. 56 Am J1st Ven § 19.

debitum fundi. A debt secured by real property.

debitum in presenti, solvendum in futuro. A present indebtedness to be paid at a future time. "Although the duties thus accrue to the government as a personal debt of the importer, upon the arrival of the goods at the proper port of entry, yet it is but a debitum in presenti, solvendum in future, according to the Revenue Collection Act." *Meredith & Ellicott v United States* (US) 13 Pet 486, 493, 10 L Ed 258, 262.

debitum sine brevi. He owes without declaration filed. 30A Am J Rev ed Judgm § 156; an action of debt brought without a writ.

See **judgment debitum sine brevi.**

de bone memorie. Of good memory; of sound mind.

de bonis asportatis. For carrying away goods.

See **trespass de bonis asportatis.**

de bonis defuncti. From the goods of the deceased. See 2 Bl Comm 512.

de bonis ecclesiasticis. Of ecclesiastical goods,—the name of a species of writ of execution which was only used against ecclesiastics. The writ was given after the sheriff had made his return upon a common writ of execution stating that the defendant was a beneficed clerk, not having any lay fee. See 3 Bl Comm 418.

de bonis intestati. Out of or from the goods of the intestate.

See **judgment de bonis intestati.**

de bonis non. See **de bonis non administratis.**

de bonis non administratis. Of goods not administered.

See **administration de bonis non; administrator de bonis non; administrator de bonis non cum testamento annexo.**

de bonis non amovendis. For the nonremoval of goods,—a writ to prevent the removal of goods pending the court's decision on the defendant's writ of error.

de bonis propriis. Out of, from, or concerning the property of a person who is an executor or administrator, belonging to himself, personally.

de bonis testatoris. Out of, from, or concerning the property of the testator.

de bonis testatoris ac si. Out of or from the goods of the testator, if there are any.

de bono et main. For good and evil,—a formal expression of an appellee who was appealed for felony, when he rested his case with the jury; the name given to special writs of gaol delivery which it was anciently the course to issue for each particular prisoner. These writs being found inconvenient and oppressive, a general commission for all the prisoners was long ago established in their stead. See 4 Bl Comm 270.

de bono gestu. For or during good behavior.

debruser. To break; to break up.

debt. A common-law action for the recovery of a fixed and definite sum of money or for a sum of money which can be ascertained from fixed data by computation or is capable of being readily reduced to certainty. 1 Am J2d Actions § 20; that which is owing to a person under any form of obligation or promise, including obligations arising under contract, obligations imposed by law without contract, even judgments. Anno: 12 ALR2d 799. In the broad sense of the term, "debt" includes a claim for unliquidated damages. Anno: 69 L Ed 380.

In the ordinary sense, "debt" is not merely a promise to pay money but is an unconditional and legally enforceable obligation for the payment of money; it involves the relationship of debtor and creditor, or of borrower and lender. *Evans v Kroh* (Ky) 284 SW2d 329, 58 ALR2d 1446. In a narrower sense, a "debt" is an obligation arising out of contract, express or implied, which entitles the creditor unconditionally to receive from the debtor a sum of money which the debtor is under legal,

[312]

equitable, or moral obligation to pay without regard to any future contingency. *Evans v Kroh* (Ky) 284 SW2d 329, 58 ALR2d 1446.

An action is one for a "debt," sufficient for the issuance of a writ of garnishment, where it is based on rescission of a contract because of fraud of the seller, and seeks recovery back of a specified sum paid under the contract, even though actual rescission of the contract before institution of the suit was prevented by absence of the defendant, and recovery of damages for fraud and deceit is requested in the alternative. *Cleveland v San Antonio Bldg. & L. Asso.* 148 Tex 211, 223 SW2d 226, 12 ALR2d 781.

The word "debt," appearing in a constitution or statute fixing a debt limit for municipalities, does not have a fixed legal signification but is used in different statutes and constitutions in senses varying from a very restricted to a very general signification. Its meaning, therefore, in any particular statute or constitution is to be determined by construction. 38 Am J1st Mun Corp § 410. Unless absolutely required, the words "debt" or "liability" in debt limitation provisions should not be so interpreted

as to paralyze the legal functioning of municipal corporations which have reached or exceeded their existing debt limits. *Moore v Springfield*, 144 Me 54, 64 A2d 569, 16 ALR2d 502.

A sum of money which is payable is a debt, without regard to whether it be payable presently or at a future time. Hence, a debt may be a debt due or a debt not due. *State ex rel. Rice v Wilkinson*, 82 Mont 15, 264 P 679, 683.

debt by special contract. Same as **debt by specialty**.

debt by specialty. Also called a debt by special contract. It is a debt or contract whereby a sum of money becomes, or is acknowledged to be, due by deed or by an instrument under seal. *Kerr v Lydecker*, 51 Ohio St 240, 37 NE 267.

See **specialty**.

debt due. Literally, an obligation which is due, that is, mature. Within the meaning of a garnishment statute, a debt is "due" and therefore subject to a garnishment when there is an existing obligation to pay in the present or in the future. That is, the debt need not be presently payable, nor need it be liquidated. *Calechman v Atlantic & Pacific Tea Co.* 120 Conn 265, 180 A 450, 100 ALR 302.

debtee. One to whom a debt is due; a creditor.

debt limit. See **limitation of indebtedness**.

debt not due. See **debt due; maturity**.

debt of another. See **promise to pay the debt of another**.

debt of record. A sum of money which appears to be due by the evidence of a court of record; a debt evidenced by the judgment of a court of record. 2 Bl Comm 465; a debt or contract created of record, such as a statute staple, or statute merchant, and not one whose previous existence is only admitted of record. *Bowie v Henderson (US)* 6 Wheat 514, 518, 5 L Ed 319, 320.

debt of specialty. Same as **debt by specialty**.

debtor. A person who owes another anything, or who is under obligation, arising from express agreement or implication of law, to render and pay a sum of money to another. *Stanly v Ogden (Conn)* 2 Root 258, 262; the person obligated by a debt.

See **debt**.

debtor and creditor adjustment. See **balance**.

debtor and creditor relation. The relationship which exists between two persons when one of them, the debtor, owes money to the other, the creditor. *Kansas City, St. L. & C. R. Co. v Alton R. Co. (CA7 Ill)* 124 F2d 780. The relationship of debtor and creditor arises in tort cases the moment the cause of action accrued, within the meaning of a statute relating to conveyances fraudulent as to "creditors," so as to entitle one securing a judgment against the grantor to have set aside a fraudulent conveyance executed pending the action. *Hansen v Cramer*, 39 Cal 2d 321, 245 P2d 1059, 30 ALR2d 1204.

debtor in possession. The term applied to a debtor who continues in possession while proceedings are had in the bankruptcy court to perfect a reorganization or arrangement whereby his financial affairs may be rehabilitated.

debtor relief. The term applied to provisions of the Bankruptcy Act for compositions, debt readjustments, and reorganizations.

Debtors' Act of 1869. An English statute which abolished imprisonment for debt.

debtor's oath. See **poor debtor's oath.**

debtor's summons. A summons which issued out of an English Bankruptcy court, giving notice to a debtor to pay his creditor or become subject to bankruptcy proceedings.

debt owing. A debt which is unpaid. Such a debt is a debt owing, whether it is past due, presently due or due at a future time. State ex rel. Rice v Wilkinson, 82 Mont 15, 264 P 679, 683.

debts. See **debt; debts of decedent; debts of the United States.**

debts of decedent. All claims of creditors enforceable in law or equity. 31 Am J2d Ex & Ad § 276. As it appears in a will, the term means obligations of the decedent due or expected to become due in his lifetime. Nolte v Nolte, 247 Iowa 868, 76 NW2d 881, 56 ALR2d 854. Some authority has construed the term as including expenses of administration. Re Dickey, 87 Ohio App 255, 94 NE2d 223, 20 ALR2d 1220 (term appearing in a will). Some authority construes a widow's allowance as a "debt of the decedent." 31 Am J2d Ex & Ad § 324. But unanimity upon such construction is not to be expected.

debts of the United States. As these words are used in Art. 1, § 8 of the Constitution conferring upon Congress the power to pay debts of the United States, the debts are not limited to those which are evidenced by some written obligation, or to those which are otherwise of a strictly legal character. The term "debts" includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice,—when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding upon the conscience or the honor of an individual, although the debt could gain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. Cincinnati Soap

[313]

Co. v United States, 301 US 308, 81 L Ed 1122, 57 S Ct 764.

debut. He owed; he ought.

debut repare. He ought to repair.

de caetero. In future; henceforth; hereafter.

de calceto reparando. A writ for the repair of a causeway.

decatalogue. The ten commandments.

decanatus. A deanery; the jurisdiction of a dean.

decania. Same as **decanatus.**

decanus. A dean, an ecclesiastical officer who originally was probably appointed to superintend ten (decem) canons or prebendaries. See 1 Bl Comm 382.

de capitalibus dominis feodi. Of the chief lords of the fee. Ancient charters recited that the tenements granted should be so held. See 2 Bl Comm 299.

decapitation. Severing the head from the body, at one time a method of capital punishment in England.

de capite minutis. Of those persons who have suffered loss of citizenship.

de cartis reddendis. An old English writ for the recovery of deeds.

de catallis reddendis. An old English writ for the recovery of chattels.

de cautione admittenda. For admitting caution,—an old English writ to compel a bishop to admit an ecclesiastical prisoner to bail or caution.

decease. Death. As a verb, to die; to cease living; to depart this life.

deceased. A decedent; a dead person; a person who has died.

deceased person. A decedent; a person who has died. An absentee who has been absent for the statutory period and not heard from is neither a deceased person nor a decedent in the eyes of the law, although absentee administration has been had upon his estate. Estate of Kite, 194 Iowa 129, 187 NW 585, 24 ALR 850, 853.

See **estate of deceased person; personal representatives.**

Deceased Wife's Sister Bill. An English statute forbidding a widower's marriage with the sister of his deceased wife.

decedens. A deceased person.

decedent. See **deceased person.**

decedent's estate. See **estate of deceased person.**

deceit. A species of fraud; any false representation or contrivance whereby one person overreaches and misleads another to the hurt of the latter. Walter v State, 208 Ind 231, 195 NE 268, 98 ALR 607.

decent tales. A tales of ten. A writ of decem tales or octo tales (a tales of eight) was issued to the sheriff directing him to summon an additional number (eight or ten) of talesmen to make up a trial jury, when there was a deficiency. See 3 Bl Comm 364.

decemviri litibus judicandis. (Roman law.) Ten persons or ten judges who were appointed to aid the praetor in deciding questions of law.

decenna. A tithing; a decennary.

decennarius. One of the ten freeholders of a decennary or tithing.

See **decennary.**

decennary. A tithing, consisting of ten freeholders of the neighborhood and their families.

See **frank pledges.**

decennial census. The United States census which is regularly taken every 10 years. 14 Am J2d Census § 1.

decent burial. A relative term, varying with the financial and social standing of the deceased and his relatives, and often affected by the community and the rules of religious, social, or political organizations with which the deceased was affiliated, as a member or otherwise.

What would be regarded as proper and appropriate by one might be regarded as wholly inadequate and unsuitable by another, and no rule or definition can well be formulated, but by common consent, a determination of these matters is left exclusively to the relatives or friends of the deceased. *Seaton v Commonwealth*, 149 Ky 498, 149 SW 871.

de ceo se mettent en le pays. See **et de ceo se mettent en le pays.**

deceptione. See **de deceptione.**

Deceptis non decipientibus, jura subveniunt. The laws aid those who have been deceived, but not the deceivers.

decern. To decree.

de certificando. A writ which lay to compel the certification of a document.

de certiorando. A writ which lay to compel a sheriff to give his certificate of a fact.

decessus. Decease; death.

decet. It is fitting; it is proper; it is becoming.

de cetero. In future; hereafter; henceforth.

Decet tamen principem, servare leges, quibus ipse solutus est. Yet it becomes a prince to protect those laws from which he himself is exempt. This was a rule of the Roman law which "is at once laying down the principle of despotic power, and at the same time acknowledging its absurdity." See 1 Bl Comm 239.

de champertia. An old writ which issued for the enforcement of the statutes against champerty.

de char et de sank. Of flesh and blood.

de chimino. A writ to secure or enforce a right of way.

De Cibariis Utendis. Concerning things useful as food,—the title of a sumptuary law passed in the reign of Edward the Third.

decide. To determine an issue or issues. To "decide" includes the power and right to deliberate, to weigh the reasons for and against, to see which preponderate, and to be governed by that preponderance. *Commonwealth v Anthes*, 71 Mass (5 Gray) 185, 253.

[314]

decies tantum. Ten times as much,—an ancient writ or proceeding under which a juror who had been bribed was made to pay ten times the amount received by him for his vote.

decimae. Tenths; tithes; the tenth part of the annual profit of each clergyman's living. Originally these tithes went to the pope, but with the end of papal authority in the reign of Henry the Eighth, they were transferred to the king as the head of the church. See 1 Bl Comm 284.

Decimae debentur parochio. Tithes are due the parish parson.

Decimae de decimatis solvi non debent. Tithes are not due from that which is paid as tithes.

Decimae non debent solvi, ubi non est annua renovatio, et ex annuatis renovantibus simul semel. Tithes ought not be paid where there is not an annual renovation, and only once from annual renovations.

decimation. Selection by lot and the killing of every tenth one; the killing of a large part. A tithing.

deciner. Same as **decennarius.**

Decipi quam fallere est tutius. It is safer to be deceived than to mislead.

de circumstantibus. From the bystanders. Whenever the general panel was exhausted and additional jurors were required to complete a trial jury, they were formerly summoned (*de circumstantibus*) from the bystanders by the sheriff. 31 Am J Rev ed Jury § 91.

decision. The report of a conclusion reached, especially the conclusion of a court in the adjudication of a case or the conclusion reached in an arbitration. *Pierre Water-Works Co. v Hughes County*, 5 Dak 145, 163, 37 NW 733; an adjudication by the court without formulating the result in a judgment. Anno: 73 ALR2d 288-291; 20 Am J2d Cts § 70; sometimes synonymous with judgment, as where both words are used in a statute requiring a liberal construction. 30A Am J Rev ed Judgm § 14; the application, by a court of competent jurisdiction, of the law to a state of facts proved, or admitted to be true, and a declaration of the consequences which follow. *Le Blanc v Illinois Cent. Railroad Co.* 73 Miss 463, 468, 19 So 211.

See **opinion of court.**

decision at chambers. See **chambers decision.**

decision on appeal. The conclusion of an appellate court; an affirmance, reversal, modification, dismissal, remanding for further proceedings, a direction to the trial court to enter a particular judgment, or the entry of a final judgment. 5 Am J2d A & E § 897.

decisis. See **stare decisis.**

decisive oath. See **oath decisory.**

decisory oath. See **oath decisory.**

decitizenize. To deprive of citizenship.

de clamia admittenda in itinere per attornatum. A writ to compel the justices to allow a person who was engaged in the service of the king to appear by attorney.

declarant. A person who makes a statement which may thereafter be offered as evidence.

declaration. The pleading, better known in modern practice as a complaint or petition, wherein the plaintiff sets forth his cause of action. 41 Am J1st Pl § 73; the listing by a person entering the United States of merchandise or other articles brought into the country by him. 21 Am J2d Cust D § 74; a written or oral statement, the significance of which in the law of evidence is connected with its hearsay character, that is, its effect as a statement of one other than a witness upon the stand. 29 Am J2d Ev § 597.

declaration against interest. Simply, as the term implies, a statement against the interest of the declarant. 29 Am J2d Ev § 617.

declaration of abandonment of homestead. A formal declaration of abandonment of a homestead, executed and acknowledged as required by statute and recorded in the office in which the homestead was recorded.

declaration of dividend. Action taken by the board of directors of a corporation which creates a dividend to be paid by the corporation and the right of a stockholder to demand and receive it. 19 Am J2d Corp § 839; involving the creation of a debt owing by the corporation to each stockholder and an appropriation of surplus to the payment of such debt. *Maloney v Western Cooperage Co.* (CA9 Or) 103 F2d 992.

declaration of homestead. A statement of the fact of claiming a homestead exemption describing the property selected and filed with the county recorder for the purpose of showing the world that the occupants claim their homestead exemption rights in the property. 26 Am J1st Home § 90.

Declaration of Independence. The formal public announcement by the Continental Congress on July 4, 1776, reciting the grievances of the American colonies against the British Government and declaring them to be free and independent states. While the statements in the document do not have the force of organic law, it is always safe to read the Constitution in the light of it. 16 Am J2d Const L§15.

declaration of intention. A declaration by an alien of his intention to become a citizen. The filing of such a declaration is permissive under the present law. *United States v Menasche*, 348 US 529, 99 L Ed 615, 75 S Ct 513. Under the former law, the filing of a declaration of intention was a condition precedent to the filing of a petition for naturalization. 3 Am J2d Aliens § 147.

Declaration of London. A statement by the powers assembled at the London Naval Conference of 1909, concerning the laws of naval warfare.

Declaration of Paris. An international declaration on important points of maritime law made at Paris in 1856.

declaration of rights. That part of a state constitution containing a formal declaration enumerating somewhat in detail the rights of the citizen which the state government must respect; "not a mere enunciation of abstract principles, but a solemn enactment by the people themselves, guarded by a sufficient sanction." *McMasters v West Chester Normal School*, 13 Pa Co 481, 487.

See **bill of rights**.

Declaration of Taking Act. A federal statute in respect of the taking of private property for public

[315]

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

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

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

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

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

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

See **declaratory judgment.**

declaratory. Explanatory; affirmative; tending to remove doubt.

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

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

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

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

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

declaratory statute. A statute which is declaratory or expressive of the common law, *Gray v Bennett*, 44 Mass (3 Metcalf) 522, 527; a statute, the purpose of which is to declare or settle the law where its correct interpretation has been doubtful or uncertain.

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

declared dividend. See **dividend declared.**

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

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

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

See **declaration of trust.**

de claro die. By the light of day.

de clauso fracto. Of breach of close.

de clerico admittendo. For admitting the clerk. A writ of execution which was directed to the bishop or archbishop, not to the sheriff, requiring the admission and institution of the clerk presented by the patron who had recovered in a *quare impedit*, or assize of darrien presentment. See 3 Bl Comm 412.

de clerico capto per statutum mercatorium deliberando. A writ for the liberation of a clerk who was arrested or imprisoned for the violation of a statute merchant.

de clerico convicto commisso gaolae in defectu ordinarii deliberando. A writ for the liberation of a clergyman convicted and committed to jail in the absence of the ordinary.

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

declination. A plea to the jurisdiction.

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

[316]

after conviction and before judgment. A plea of sanctuary was also called a declinatory plea. See 4 Bl Comm 333.

declinature. Same as **declination.**

decline. To refuse in polite terms, as to decline appointment to an office or nomination as a candidate for office.

declined. Refused.

decollatio. Same as **decapitation.**

decollation. Same as **decapitation.**

de combustione domorum. An appeal of felony charging the crime of arson.

de common droit. Of common right.

de commorientibus. Concerning those dying together.

de communi consilio super negotiis quibusdam arduis et urgentibus, regem, statum, et defensionem regni Angliae et ecclesiae Anglicanae concernentibus. Concerning the common council upon certain difficult and urgent affairs relating to the king, the state, the defense of the kingdom of England and of the English church. See 1 Bl Comm 159.

de communi dividendo. A writ for the partition of property held by tenants in common.

de comon droit. Same as **de common droit.**

decompose. To rot; to come apart by deterioration. Anno: 45 ALR2d 873 (food).

de computo. A writ of account, to compel a person to render an account.

de concilio curiae. By the advice of the court.

de conflictu legum. Of or concerning the conflict of laws.

De Conjunctim Feoffatis. Of or concerning joint feoffees,—the title of a statute passed in the reign of Edward the First.

de consanguineo. A writ of cosinage.
See **cosinage.**

de consilio. Of counsel.

de consilio curiae. By the advice of the court.

de conspiratione. A writ of conspiracy.

De Conspiratoribus. Concerning conspirators,—a famous statute of 33 Edw. I, often credited with originating the crime of conspiracy, but erroneously so, because the offense previously existed at common law. Commonwealth v Donoghue, 250 Ky 343, 63 SW2d 3, 89 ALR 819.

de consuetudine Angliae. By the custom of England. See 3 Bl Comm 95.

de consuetudinibus et servitiis. Of customs and services,—the name of a writ which lay for the lord against his tenant who withheld rents and services due the landlord by custom or tenure. See 3 Bl Comm 232.

de continuando assisam. A writ to continue the assize.

de contributione facienda. A writ for making contribution,—a writ to compel coparceners or cotenants to contribute for services rendered.

de contumace capiendo. A chancery writ for the arrest of a person who had committed a contempt.

de conventione. A writ of covenant.

de copia libelli deliberanda. A writ for the delivery of a copy of a libel.

Decoration Day. See **Memorial Day.**

de cornes et de bouche. With hue and cry.

de coronatore eligendo. For the election of a coroner,—a writ for the election of a coroner which was originally an elective office. After election, the writ was returned in chancery and was a judicial act of record. The office did not cease with the king's death, but continued until the coroner was removed.

de coronatore exonerando. For discharging a coroner,—a writ which lay for the removal of a coroner from his office for neglect of duty.

de corpore. Of the body.

de corpore comitatus. From the body of the county. Since the statute 24 George II, c. 18 (1750), juries have been summoned from the county at large, and not de vicineto, from the particular neighborhood, as formerly. See 3 Bl Comm 360.

de corpore suo. Of his body. 28 Am J2d Est § 49.

de coste. On the side; from the side; collateral.

decoy. Verb: To entice; to tempt; to lure or allure. *Eberling v State*, 136 Ind 117, 120. Noun: A person or a thing which allures. The use of the police decoy is not necessarily an entrapment. 21 Am J2d Crim L § 144.

decoy duck. A sham bidder at an auction sale. 7 Am J2d Auct § 26.

decoying. A possible method of kidnapping. 1 Am J2d Abduct § 13.

See **decoy.**

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

decrease. Diminution.

de credulitate. Upon belief, the form of oath made by compurgators in a wager of law. See 3 Bl Comm 343.

[317]

decree. The judgment of a court of chancery or equity. 27 Am J2d Eq § 245. A final determination of the rights of the parties in an action in equity.

In many states which have adopted code procedure or operate under a comprehensive set of rules of practice, the distinction between decrees and judgments are abolished for all practical purposes, relief in all actions and suits, whether of a legal or equitable character, being obtained by a judgment in a civil action. 30a am J Rev ed Judgm § 10.

While formerly there was a strict distinction between the terms "judgment" and "decree," the term "judgment" being applied to decisions in actions at law, and "decree" being applied to decisions in cases in equity, the modern tendency is to construe constitutional and statutory provisions dealing with appealability of "judgments" as also including "decrees." *Jelm v Jelm*, 155 Ohio St 226, 44 Ohio Ops 246, 98 NE2d 401, 22 ALR2d 1300.

decree absolvitor. A decree acquitting a defendant.

decree a mensa et thoro. See **divorce a mensa et thoro.**

decree a vinculo matrimonii. See **divorce a vinculo matrimonii.**

decree by consent. See **consent decree.**

decree condemnator. A decree in favor of a plaintiff.

decree dative. A decree which appointed as executor a person who was not nominated in the will.

decree in absence. A decree rendered against a party by reason of his default.

decree nisi. A provisional judgment to be made absolute on motion unless cause is shown against it, the distinguishing characteristic being that further order is required to complete the rendition of a final judgment. 30A Am J1st Judgm § 119. The interlocutory judgment or decree in a divorce action. 24 Am J2d Div & S § 427.

decree nunc pro tunc. See **nunc pro tunc order.**

decree of confirmation. A judgment or decree of court confirming a sale by an administrator, executor, guardian, committee, receiver or other officer of court, usually a prerequisite to the passing of title.

decree of distribution. See **order for distribution.**

decree of divorce. A judgment which grants a divorce, not to be distinguished from judgments rendered in cases other than divorce actions, in the absence of statutory provisions creating such distinction. *Jelm v Jelm*, 155 Ohio St 226, 98 NE2d 401, 22 ALR2d 1300.

See **divorce.**

decree of foreclosure. See **foreclosure.**

decree of interpleader. A decree in favor of the plaintiff in interpleader, discharging him and leaving the claimants interpleaded by him to litigate between themselves for the stake brought by him into court. 30 Am J Rev ed Interpl § 266.

decree of nullity. A judgment or decree annulling a marriage. 4 Am J2d Annul § 92.

decree pro confesso. A judgment or decree in a suit in equity taken against a defendant in default. 27 Am J2d Eq § 221.

The method in equity of taking a bill pro confesso is consonant with the rule and practice of the courts of law, where, if the defendant makes default, judgment is given for the plaintiff. To take a bill pro confesso is to order it to stand as if its statements were confessed to be true. *Thompson v Wooster*, 114 US 104, 111, 29 L Ed 104, 107, 5 S Ct 788.

decree quasi in rem. See **proceeding quasi in rem.**

decreet. Same as **decree.**

decrementum maris. Reliction; the receding of the sea.

decrepit. Worn out by illness, age, or hard work. A person may be decrepit without being old. *Hall v State*, 16 Tex App 6.

decreta. Decrees, plural of **decretum.**

Decreta conciliorum non ligant reges nostros. The decrees of councils do not bind our kings.

Decretalia Gregorii Noni. The decretals of Pope Gregory the Ninth published about 1230. See 1 Bl Comm 82.

decretal order. An order in equity preliminary to the final decree or judgment in the case. See **interlocutory decree.**

decretals. Canonical opinions of the popes.

decretum. A decree; a law.

Decretum Gratiani. A compilation of canon law made by the Italian monk, Gratian, about 1151. See 1 Bl Comm 82.

decry. To discredit; to cry down. Blackstone said that the king of England might at any time decry, or cry down, any coin of the kingdom, and thus make it no longer current. See 1 Bl Comm 278.

de curia claudenda. A writ which lay at common law for the tenant of an adjoining close, whereby he could compel his neighbor to erect a fence and pay him damages, if he could show a prescriptive right to have the fence erected and maintained by the defendant. *Rust v Low*, 6 Mass (6 Tyng) 90, 94.

decurio. An ancient Roman city manager; a Roman commander of ten soldiers.

de cursu. Of course; as a matter of right.

de custode admittendo. A writ for the admission of a guardian.

de custode amovendo. A writ which lay for the removal of a guardian.

de custodia terrae et haeredis. For the custody of land and heir, writ whereby the guardian of a minor recovered possession and custody of the lands and person of his ward. See 3 Bl Comm 141.

de cy en avant. From the present henceforth.

dedbaba. Homicide; the killing of a human being.

de debito. A writ of debt.

de debitore in partes secundo. For cutting a debtor into pieces. The ancient law of the twelve tables has been interpreted to mean that creditors might lawfully desiccate their debtor's body and divide the pieces proportionately to their claims. See 2 Bl Comm 472.

de deceptione. A writ of deceit.

de defaute de droit. For failure of right.

[318]

de deoneranda pro rata portionis. A writ which lay for a tenant whose goods had been distrained for rent to enforce contribution against others who were jointly liable with him.

de déshdrénce. See **droit de d6sherence.**

dedi. I have given. An apt word of conveyance used in ancient deeds. 2 Bl Comm 310.

dedicate. To make a dedication.

See **dedication.**

dedication. The setting aside of land for a public use, in other words, the intentional appropriation or donation of land, or of an easement or interest therein, by its owner for some proper public use. *Sioux City v Tott*, 244 Iowa 1285, 60 NW2d 510.

dedication by deed. A common form of dedication, being a dedication made by a deed setting forth the exact purpose for which the land is conveyed, either with or without the use of the word "dedicate," and the recording of the instrument, together with a plat of the property. 23 Am J2d Ded § 22.

dedication by plat. A common method of dedicating property for streets, sidewalks, public parks, and squares by selling and conveying lots described with reference to a map or plat upon which areas are designated as used or to be used for streets, sidewalks, etc. 23 Am J2d Ded § 25. The making, signing and acknowledgment of a map or plat of land upon which areas appear as devoted to public use as streets, sidewalks, parks, and squares, at least if followed by a recording of the map or plat. 23 Am J2d Ded §§ 23, 24.

dedication of literary property. Publication without a copyright notice or without any step taken toward obtaining protection of the work by a copyright. *Deward & Rich v Bristol Sav. & Loan Corp.* (CA4 Va) 120 F2d 537.

dedication to public. Any dedication of property. The essence of dedication is that it shall be for the use of the public at large. 23 Am J2d Ded § 3.

dedicator. One who dedicates land to public use. Such a dedication must be made by the owner or with his consent. 23 Am J2d Ded § 8.

de die claro. By the light of day; by daylight.

de die in diem. From day to day.

dedi et concessi. I have given and granted. Words of conveyance used in ancient deeds.

dedimus. We have given.

dedimus et concessimus. We have given and granted.

dedimus potestatem. A commission directed to a judicial officer or an individual by name, authorizing him to take the deposition of the witness named therein. 23 Am J2d Dep § 22.

dedimus potestatem de attornno faciendo. We have given the power of receiving an attorney,—a king's writ authorizing a court to permit a party to appear by attorney.

dedit et concessit. He has given and granted.

dedititi. Subjects of Rome who had no rights or had surrendered unconditionally.

de diversis regulis juris antiqui. From divers rules of ancient law.

de dolo main. From evil or wicked design; of or concerning fraud.

de domo reparanda. An old writ to compel a person to repair a house because it was dangerous to the community.

De Donis. See **Statute de Donis.**

De Donis Conditionalibus. See **Statute de Donis.**

de dote assignanda. For the assignment of dower,—a writ under which the widow of a tenant in capite compelled the assignment of her dower.

de dote unde nihil habet. Of dower whereof she has nothing,—a writ under which a tenant was compelled to assign to a widow her dower. See 3 Bl Comm 183.

de droit. Of right.

deductible clause. A clause in an insurance policy, social security statute, or state plan for payment of medical or hospital expenses, expenses first incurred in a moderate amount are withdrawn from the protection of the policy or statute. A clause in an automobile collision policy whereby a stated sum, usually \$50 or \$100, is deductible from the amount for which the insurer would otherwise be liable. Under such a clause, a deduction for "each collision or upset" contemplates one deduction for each accident giving rise to a cause of action on the policy. 7 Am J2d Auto Ins § 192.

deductible losses. Losses resulting when a taxpayer's property is destroyed, damaged, confiscated, stolen, abandoned, taken by foreclosure, becomes entirely worthless or suffers other special losses, which a taxpayer is permitted to deduct in computing his net income for tax purposes providing the losses are not fully compensated for by insurance or otherwise. 34 Am J2d Fed Tax ¶ 6500.

deduction. Reasoning from a known principle; subtraction. An amount allowed a taxpayer in reduction of gross income to determine taxable income. An item to be deducted from the gross estate of a decedent in computing the taxable estate.

deduction for new. A deduction of one third from the whole amount of the cost of repairing a ship, in computing the amount to be paid the insured under a marine insurance policy. *Orrok v Commonwealth Ins. Co.* 38 Mass (21 Pick) 456, 469; 29A Am J Rev ed Ins § 1567.

deduction of a claim. The proof of a right by showing its origin either in law or in equity.

deed. Broadly defined, a writing sealed and delivered by the parties; in the modern sense, an instrument conveying real property or an interest therein. 23 Am J2d Deeds § 1.

See **absolute deed; bargain and sale; quitclaim deed; release and quitclaim; release deed; warranty deed.**

deed absolute. Same as **absolute deed.**

deeded. Conveyed by deed.

deed indented. Same as **deed of indenture.**

deed inter partes. A deed executed by grantor and grantee. *Smith v Emery*, 12 NJL 53, 60. A deed executed by the persons named therein as grantor and grantee, as distinguished from a deed executed by the agent or attorney of one of the parties or by

[319]

the agent of each of them, acting in their behalf. *Abbey v Chase*, 60 Mass (6 Cush) 54.

deed of arrangement. An assignment for the benefit of creditors.

deed of bargain and sale. See **deed of purchase.**

deed of gift. A voluntary deed, as distinguished from a conveyance of property based upon a consideration. See *McWillie v Van Vacter*, 35 Miss 428.

deed of indenture. See **indenture.**

deed of partition. A deed to one joint tenant from the others or to one tenant in common from his cotenants, whereby an estate in severalty is created in the grantee.

deed of purchase. A bargain and sale deed.

See **bargain and sale.**

deed of quitclaim. See **quitclaim deed.**

deed of release. Formerly, the term seems to have been applied only to deeds conveying all the right, title, and interest of the grantor to a grantee who already had some estate in possession in the land released, but in modern usage it is not one of the essentials of a release deed that the grantee shall already have some right, title, or interest in the property released. The term is therefore now synonymous with the term quitclaim deed. Anno: 44 ALR 1269.

See **quitclaim deed.**

deed of separation. A separation agreement and conveyance between husband and wife whereby their respective properties are disposed of between themselves.

deed of trust. A conveyance creating a trust in real estate; a conveyance given as security for the performance of an obligation, which is generally regarded as containing the elements of a valid mortgage. 36 Am J1st Mtg § 16. A species of deed which is in the nature of a mortgage and is a conveyance in trust for the purpose of securing a debt, subject to a defeasance.

It differs from an assignment for creditors, which is more than a security for the payment of debts, being an absolute appropriation of money for their payment. *Union Nat. Bank v Bank of Kansas City*, 136 US 223, 232, 34 L Ed 341, 344, 10 S Ct 1013.

The difference between a deed of trust and a mortgage is essentially one of form, the former being executed in favor of a disinterested third person as trustee, while the latter is executed directly to the creditor to be secured.

deed poll. A deed made in one part and signed only by the grantor. It took its name from the fact that the edges were smooth and polled or shaven, as distinguished from a deed which was indented and in two parts. When such a deed is accepted by the grantee, it becomes the mutual act of the parties and therefore the grantee is bound by any covenants in it which are to be performed by him. *Midland Railway Co. v Fisher*, 125 Ind 19, 24 NE 756.

deed to declare uses. See **declaring a use; leading a use.**

deed to lead uses. See **declaring a use.**

deed to support. A deed made in consideration of the grantor's future support. 50 Am J1st Sup of Per § 2.

deed to timber land. A conveyance of forest land.

de ejectione custodiarum. For the ejectment of a ward,—a writ which lay for a guardian to secure the person or land of his ward.

de ejectione firmarum. The writ of ejectment of farm. This writ lay to recover restitution and damages for ouster of possession from a term for years of the tenant against the lessor, reversioner, remainder-man, or any stranger who had turned him out during the continuance of his term. See 3 Bl Comm 199.

deem. To judge; to determine or conclude upon consideration; to form a judgment.

The word "deem," as used in the federal statutes, providing that personal property of a serviceman shall not be "deemed" to have a situs for taxation in a state in which he is required to be present by virtue of his service, does not imply a rebuttable presumption so as to permit taxation by the state of temporary presence in some cases. *Dameron v Brodhead*, 345 US 322, 97 L Ed 1041, 73 S Ct 721, 32 ALR2d 612.

deem advisable. Words which confer a discretion upon a trustee. 33 Am J1st Life Est § 287.

deemster. One of the two chief justices of the Isle of Man.

deeply indebted. The financial state of a person whose property is inadequate or barely sufficient for the payment of his debts. *Winchester v Charter*, 102 Mass 272, 274.

deer-fald. An inclosed tract or park for deer, sometimes referred to as a deer-fold.

deer-fold. See **deer-fald.**

de escambio monetarum. A writ to secure authority for drawing a bill of exchange.

de eschaeta. A writ for escheat, which lay for a lord to recover the land where the tenant died without heirs.

de esse in peregrinatione. Of being on a journey,—an excuse for not appearing at court.

de essendo quietum de thelonio. Of being quit of toll,—a writ to secure an exemption from payment of toll.

de essonio de malo lecti. A writ to examine into an excuse of being sick in bed for failing to appear at court.

de estoveriis habendis. A writ for having estovers. The writ lay for a wife divorced a mensa et thorn, whose husband refused to pay her estovers or alimony which the court had allowed her out of her husband's estate for her support. See 1 Bl Comm 441.

de estrepamento. A writ to restrain waste during the pendency of an action concerning the land.

de et super praemissis. Of and upon the premises.

de eve et de treve. From his grandfather and remote ancestors.

de excommunicato capiendo. An English chancery writ which issued to aid in carrying into effect a sentence of excommunication.

The writ has been said by some to be a writ grantable ex debito justitiae, and by others ex gratia. *Smith v Nelson*, 18 Vt 511, 555.

de excommunicato deliberando. A writ which issued out of

[320]

chancery to release a prisoner from the county jail after the bishop had certified the prisoner's reconciliation with the church, following his arrest and imprisonment under a writ de excommunicato capiendo. See 3 Bl Comm 102.

de excommunicato recapiendo. A writ for the retaking of a person who had been excommunicated from the church and who had failed to comply with the conditions of his reconciliation with the church after having been released from imprisonment.

de executione facienda in withernam. A writ of execution in withernam; that is in retaliation or by way of reprisal.

de executione judicii. A writ ordering the sheriff to execute a judgment; a writ of execution.

de exemplificatione. A writ for the exemplification of an original document.

See **exemplification.**

de exitibus terrae. From the issues or profits of the land.

de exoneratione sectae. For exemption from suit,—a writ for the exemption of a ward of the king from being sued.

de expensis civium et burgensium. A writ for the levy of the expenses of citizens and burgesses of parliament.

defacing brand. The obliteration of the brand on an animal. 4 Am J2d Am § 8.

de facto. In fact, as distinguished from "de jure," by right.

de facto annexation. See **annexation de facto.**

de facto blockade. A blockade, which may be established by a naval officer acting upon his own discretion or under direction of superiors, without governmental notification, as an adjunct to naval operations, merely by giving notice on the spot to ships coming from a distance. 56 Am J1st War § 172.

de facto contract of sale. A contract of sale which purports to pass the property from the owner to another person. *Farmers & Merchants' Nat. Bank v Logan*, 74 NY 568, 575.

de facto corporate officer. An officer of a corporation in possession of, and exercising the powers of, the office under the claim and color of an election or appointment, although he is not an officer de jure and may be removed by proper proceedings. 19 Am J2d Corp § 1100.

de facto corporation. A corporation in fact, an apparent corporate organization, asserted to be a corporation by its members, and actually acting as such, but lacking the creative fiat of the law—an organization with color of law, exercising corporate rights and franchises, the right of which to corporate functions and attributes is complete as against all the world, except the sovereign. 18 Am J2d Corp § 49.

See **de facto director.**

de facto county seat. A place occupied and recognized as the county seat under color and authority of law; that is, under color of its having been selected and established as such county seat in the mode provided by law. *Watts v State*, 22 Tex App 572, 578.

de facto court. A paradoxical expression, since the power to create courts is an attribute of sovereignty that can only be exercised by constitutional or statutory provisions. 20 Am J2d Cts § 19.

A de facto court is a competent court, or a "legally constituted court," because its judgments and proceedings are not open to collateral attack. This, of course, does not apply to a court created without color of authority, or to a mere usurper. *State ex rel. Bales v Bailey*, 106 Minn 138, 118 NW 676.

de facto custody. The custody by a divorced parent of a child, where custody has not been granted by the court to such parent, but he or she has assumed custody because of the abandonment of the child by the parent awarded custody or by the relinquishment of custody of the child by the other parent. 24 Am J2d Div & S § 872.

de facto director. A person who usurps the office of a member of a board of directors of a corporation, and exercises the functions of a member of the board, under color of an election or appointment in itself not legal. *Hulings v Hulings Lumber Co.* 38 W Va 351, 361, 18 SE 620.

de facto dissolution. That dissolution of a corporation which takes place, in substance and in fact, in the case of corporations organized for pecuniary gain, when the corporation, by reason of insolvency or for other reason, suspends all its operations and goes into liquidation. *Youree v Home Town Mut. Ins. Co.* 180 Mo 153, 164, 79 SW 175.

de facto government. A new government which exercises undisputed sway over the entire country, the former established government having been nullified by successful rebellion or having lost the support of the people.

A de facto government arises where the established government has been subverted by rebellion, so that the new government exercises undisputed sway for the time being over the entire country, or where the people of any portion of a country subject to the same government throw off their allegiance to that government and establish one of their own, and show not only that they have established a government, but also their ability to maintain it. 30 Am J Rev ed Internat L § 12.

de facto grand juror. A person who sits on a grand jury and acts under color of law in joining in the return of an indictment, although subject to removal upon direct attack by reason of a legal impediment, such as having once refused to qualify for such grand jury and having paid a fine imposed for such refusal. 24 Am J1st Grand J § 23.

de facto grand jury. A grand jury sitting under color of law and recognized by the court as lawful, although subject to a direct attack against the exercise of functions by it by reason of a legal impediment, as where it was impaneled for a term of court that has terminated and is holding over into the next succeeding term. 24 Am J1st Grand J§6.

de facto guardian. One who intercedes to assume the management of the person and property of an infant left unprotected by the death of its parents, without waiting for a formal appointment as guardian, although so related to the infant as to be entitled to appointment. Maish v Valenzuela, 71 Ariz 426, 229 P2d 248, 25 ALR2d 747.

[321]

de facto judge. One who exercises the duties of the judicial office under color of an appointment or election thereto; one who exercises such duties, first, without a known appointment or election, but under such circumstances of reputation or acquiescence as are calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the judge he assumed to be; or, second, under color of a known and valid appointment or election, but where the person appointed or elected judge has failed to conform to some precedent, requirement, or condition, such as to take an oath, give a bond, or the like; or, third, under color of a known election or appointment, void because the person appointed or elected judge was not eligible or because there was a want of power in the electing or appointing body or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public; or, fourth, under color of an election or appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be unconstitutional. 30A Am J Rev ed Judges § 229.

de facto justice of the peace. An officer who has the possession of the office of justice of the peace and performs the duties of such office under color of right, without being actually qualified in law so to act, but is not in fact a mere usurper. 31 Am J Rev edJP§6.

de facto king. A usurper who has secured possession of the throne. Temporary allegiance is due such a king, for his administration of the government, and the temporary protection of the public. "Treasons committed against Henry the Sixth were punished under Edward the Fourth, though all the line of Lancaster had been previously declared usurpers by Act of Parliament." See 4 Bl Comm 77.

de facto municipal corporation. See **municipal corporation de facto.**

de facto officer. See **de facto corporate officer; de facto public officer.**

de facto official newspaper. A newspaper which has acted as an official newspaper without having been legally and regularly designated as such. 39 Am J1st Newsp § 12.

de facto public officer. Summarily defined as one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. Comprehensively defined as a person exercising the duties of the office (1) without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be; (2) under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent, requirement, or condition, as to take an oath, give a bond, or the like; (3) under color of a known election or appointment, void, because the one elected or appointed was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some

defector irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public; (4) under color of an election or appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such. 43 Am J1st Pub Of § 471.

de facto road. A road actually used by the public. *Locke v First Div. St. Paul & Pacific Railroad Co.* 15 Minn 350.

de facto school district. A school district acting under color of law. 47 Am J1st Sch § 24.

de facto segregation. Racial imbalance in the public schools resulting, not from a qualification of color, but from the concentration of persons of one race in the area of school attendance. 15 Am J2d Civ R § 39.

de faire echelle. A clause commonly contained in French marine insurance policies which is the equivalent of a license to touch and trade at intermediate ports. *American Insurance Co. v Griswold (NY)* 14 Wend 399, 491.

defalcation. Including embezzlement and misappropriation but a broader term than either. *Re Butts (DC NY)* 120 F 966, 970. As used in the provision of the bankruptcy act excepting debts created by defalcation from the effect of a discharge, "defalcation" was intended to include defaults other than malversations implied by fraud, embezzlement and misappropriation, and does not necessarily denote moral deliction. *First Citizens Bank v Parker*, 225 NC 480, 35 SE 489, 163 ALR 1003.

Used in an unusual but proper sense, the term "defalcation" is synonymous with recoupment and counterclaim. 21 Am J2d Countcl § 12.

See **without defalcation.**

De Falso moneta. Of false money, the title of a statute passed in the reign of Edward the First, making the importation of certain foreign coins a capital offense.

defalta. Default.

defamation. Libel or slander. The publication of anything which is injurious to the good name or reputation of another person, or which tends to bring him into disrepute. *Hollenbeck v Hall*, 103 Iowa 214, 72 NW 518. Words which produce any perceptible injury to the reputation of another; a false publication likely to bring another in disrepute. *Mosnat v Snyder*, 105 Iowa 500, 504, 75 NW 356.

See **defamatory; libel; malice; privileged communications; slander; unfair comment.**

defamatory. Slanderous; libelous; injurious to reputation. *Hollenbeck v Hall*, 103 Iowa 214, 72 NW 518. A publication is "defamatory" when it tends to injure one's reputation in the community and to expose him to hatred, ridicule, and contempt. *Muchnick v Post Publishing Co.* 332 Mass 304, 125 NE2d 137, 51 ALR2d 547.

See **defamation.**

defamatory advertising. An advertisement which is libelous or disparaging of a product. 3 Am J2d Advertg § 2.

defamatory per se. See **libelous per se; slanderous per se.**

defamer. A person who has published a defamation concerning another.

See **defamation; defamatory.**

default. Fault; neglect; omission; the failure to perform a duty or obligation; the failure of a person to pay money when due or when lawfully demanded. *Docking v National Surety Co.* 122 Kan 235, 252 P 201. The failure of a party to an action to

appear in the action where he is under duty to appear, as where a defendant has been served with timely and legal process or to plead in an action

[322]

where he is required to plead. 30A Am J Rev ed Judgm §§ 198 et seq.

In the law of mandamus a "default" is a failure of a public officer or a group of officers to perform a legal duty. Anno: 175 ALR 650.

See **default judgment; wilful default.**

default day. Same as appearance day,—the last day upon which a defendant may appear in order to avoid a default and the taking of a default judgment. *Cruger v McCracken* (Tex Civ App) 26 SW 282, 283. In an older day and under a practice which has been eliminated in most jurisdictions, a particular day of the term of court, usually the second day, was the "default day" for all actions commenced for the term irrespective of the time that had intervened between the service of process and the beginning of the term. Consequently "default day" was an occasion at which most of the lawyers of the county and many of the circuit outside the county gathered to take or prevent defaults. Liberality on the part of some judges, even at times in conflict with statute, permitted an appearance to be entered on behalf of a defendant when the case was called in the reading of the judge's calendar.

default final. See judgment by default final.

default inquiry. See judgment by default and inquiry.

default judgment. A judgment rendered upon an omission by the defendant to take a necessary step in the action within the proper time, for example, a failure to appear or a failure to plead, such omission being a default entitling the plaintiff to have judgment rendered in his favor, usually, but not invariably, without proof of his claim except as evidence is required to establish damages. 30A Am J Rev ed Judgm §§ 198 et seq.

defeasance. The clause of a mortgage intended to define the terms and conditions upon which the mortgage shall be satisfied, cease to be security for a debt, and become void. *First Nat. Bank v Bain*, 237 Ala 580, 188 So 64. More generally defined as a clause in a deed, lease, or other written instrument the legal effect of which is to defeat, cancel, or annul the instrument in whole or in part and thus wholly or partly to release the parties from obligations arising under it upon the happening or not happening of a condition subsequent. *Escambia Land & Mfg. Co. v Ferry Pass Inspectors & Shippers Asso.* 59 Fla 239, 52 So 715.

defeasible. Subject to defeasance.

See **defeasance.**

defeasible fee. See **determinable fee.**

defeat. To make void; to annul; to overcome.

defect. An insufficiency; an absence of something necessary for completeness or perfection. *Bolds v Budwig*, 19 Neb 739, 741.

See **hidden defect; physical defect.**

defect in ways, works, or machinery. Imperfections which render the ways, works or machinery less fit for the use for which they were intended, subsisting in some inherent condition of a permanent nature; some weakness of construction with reference to the proposed uses; some inadaptation to its purposes; some break or misplacement of the parts, or absence of some part;

some innate abnormal quality of the thing which renders its use dangerous; some obstacle in the way of use or obstruction to use which is part of the thing itself, or of the condition of the thing itself. *Hubbard v Central of Georgia Railway Co.* 131 Ga 658, 63 SE 19.

defective. Having defect or flaw of any kind; imperfect; incomplete; lacking; faulty.

The word is not the antonym of the word efficient and yet there are cases in which it has been held to be synonymous with inefficient. *Thayer v Denver & R. G. R. Co.* 25 NM 559, 185 Y 542.

See **mental defect**; **physical defect**.

defective highway. A highway which is not in such physical condition as to render it reasonably safe for travel by one exercising ordinary care, due to inadequacy of original construction or repairs, subsequent deterioration, obstacles in the way, structures extending or hanging above the way, even wires stretched across the way. 25 Am J1st High § 476.

defective or broken fixtures. An ordinance prohibiting the installation of "defective or broken plumbing fixtures" is invalid inasmuch as its ambiguous language is subject to application to defects not impairing the operating efficiency of the fixtures and therefore not endangering the public health. *Thrift Hardware & Supply Co. v Phoenix*, 71 Ariz 21, 222 P2d 994, 22 ALR2d 810.

defective record. A record of an instrument so defective for want of index or inaccuracy in copying that constructive notice of the instrument is not imputed to a third person. 45 Am J1st Reeds § 113.

defective street. Same as **defective highway**.

defective title to instrument. The title of a person negotiating a negotiable instrument is defective when he obtained the instrument, or any signature thereto, by fraud, duress, force, fear, or for other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as to amount to a fraud. Uniform Negotiable Instruments Law § 55; *Vincennes Sav. & Loan ASSO. v Robinson*, 107 Ind App 558, 23 NE2d 431, 24 NE2d 558.

defective title to real estate. A title which is not marketable.

See **marketable title**.

defect of form or substance. If the right of the party pleading sufficiently appears to the court, although the pleading does not conform to the established method of procedure, the pleading is said to be defective in matter of form. But if the right does not sufficiently appear to the court, the pleading is defective in matter of substance. *Lake Shore & Michigan Southern Railway Co. v Kurtz*, 10Ind App 60, 75, 37 NE 303.

defect of heirs. The want of inheritable blood which, upon the death of the tenant, was one of the causes of escheat under feudal tenure. See 2 Bl Comm 245.

defect of parties. A matter of too few, not too many. The failure to join as plaintiffs or defendants persons whose presence in the action is necessary to the determination of the action. *Baird v Meyer*, 55 ND 930, 215 NW 542, 56 ALR 175.

defect of substance. See **defect of form or substance**.

defectu juris. See **ex defectu juris**.

defectum. A defect; an insufficiency.

defectu natalium. See **ex defectu natalium.**

defectu sanguinis. See **ex defectu sanguinis.**

defectus sanguinis. The ab-

[323]

sence of blood-relationship; the lack or failure of heirs capable of inheriting.

defend. To oppose an attack; to oppose force by force; to oppose a claim or an action; to plead in defense of an action; to contest an action suit or proceeding; to deny. To fence in and shut against common use; as the banks of a river are said to be defended when they are thus closed to the public as a place to fish. *Arnold v Mundy* (NJ) 1 Halsted 1.

defendant. The person against whom an action or proceeding is brought. The respondent in an action in admiralty. 2 Am J2d Adm § 142. Any natural or artificial person who is sued or who is joined with another party or other parties who are sued. 39 Am J1st Parties § 23.

A party who appears in an action as an intervener, who prays to be made a party defendant, and whose prayer is allowed by the court, is a party defendant in the action. *Real Estate Loan Co. v Brown* (DC Ga) 23 F2d 331.

See **respondent.**

defendant in error. An appellee; a person in whose favor a judgment was rendered and who is named by the appellant or plaintiff in error as a party to an appeal or error proceeding. 4 Am J2d A & E § 278.

defendemus. We will defend,—a formal word used in covenants of warranty.

defendendo. See **homicide se defendendo.**

defender. A defendant in an action, particularly in Scotland; a champion.

See **public defender.**

defendere. To defend; to deny.

defendere se per corpus suum. To defend himself with his body,—to wage battle.

defendere se unica manu. To defend himself with one hand, probably by raising it to make oath; to wage his law.

See **compurgation.**

defender of the faith. One of the several titles of the King or Queen of England.

defendit vim et injuriam. He defends or denies the force and injury.

defendour. A defender; a champion.

defendre. To defend; to deny.

defendress. A female defender.

defeneration. Lending of money at a usurious rate of interest

defensa. An inclosure; a place which is fenced; a park.

defense. Protection against attack; a matter pleaded by a defendant in an action either to delay the action without destroying the cause or right of action or to defeat the action for all time. 41 Am J1st Pl § 115.

See **national defense; plea; self-defense.**

defense au fond en droit. A denial of the foundation of the (plaintiff's) right,—a denial that the plaintiff has a cause of action,—a general demurrer.

defense au fond en fait. A denial of the foundation of the (plaintiff's) facts,—a general denial.

Defense Bases Compensation Act. A federal statute which, subject to certain exceptions, renders the workmen's compensation benefits of the Longshoremen's and Harbor Workers' Compensation Act available to any employee who is injured while employed outside the United States under a public work contract or while doing work which is preparatory and ancillary thereto. Anno: 2 L Ed 1979.

defense counsel. A trial lawyer; a lawyer conducting or assisting in conducting the defense in a civil action or criminal prosecution; the counsel for the accused in a general or special court-martial.

Defense Department. An executive department of the United States government created by National Security Act Amendments of 1949, inclusive of the Department of the Army, the Department of the Navy, and the Department of the Air Force, since reorganized by the Department of Defense Reorganization Act of 1958. 5 USC §§ 171 et seq.

defense en droit. Same as **defense au fond en droit.**

defense on the merits. See **meritorious defense.**

defensio. A defense; a prohibition.

defensive allegation. A kind of pleading in which a defendant in an ecclesiastical cause must propound any circumstances he had to offer in his defense. Thereupon the defendant was entitled to the plaintiff's sworn answer to this defensive allegation, and thence the parties proceeded with their proofs. See 3 Bl Comm 100.

defensive negative averments. See **negating defenses.**

defensor. A defendant; a guardian; a warrantor of title.

defensor civitatus. A Roman city officer who had charge of the public safety.

defensum. A place fenced in; a park; an inclosure.

de feodo. In fee.

deferment. Putting off to a future time; postponement of vesting or enjoyment of an estate; the action of a selective service draft board in postponing the call of a person within the draft to service in the armed service.

deferred dividend policy. A policy of life insurance wherein it is stipulated that the insured is not entitled to any part of the surplus or dividend, otherwise accruing upon the policy annually, until the expiration of a dividend period, which may be 5 years, 10 years, 15 years, even 20 years, depending upon the stipulation, and if he dies, and his policy shall be paid within the period, the dividends accumulated on his policy are lost and go to augment the dividend fund to be applied to other policies of the same class which survive the dividend period. *Maddox v Mutual Life Ins. Co.* 193 Ky 38, 234 SW 949, 22 ALR 1276. Benefiting survivors, as it does, the stipulation has a tontine element.

See **tontine policy.**

deficiency. A characteristic term under tax laws for an additional amount owing by a taxpayer. The amount by which the federal estate tax imposed exceeds the amount shown as the tax by the executor upon his return. *United States v Kelley* (DC Cal) 24 F2d 234, 236; the amount by which the federal income tax owing by a taxpayer exceeds the amount shown to be owing by the return filed by

[324]

him. *Moore v Cleveland Ry. Co.* (CA6 Ohio) 108 F2d 656.

deficiency assessment. An assessment of an additional income tax to cover a deficiency in income revealed upon an audit of the return made by the taxpayer. 34 Am J2d Fed Tax ¶¶ 9042, 9125.

deficiency judgment. A personal judgment, rendered against any person liable for the mortgage debt, in the event of a deficiency on foreclosure, for the amount of such deficiency. 37 Am J1st Mtg § 858. There are judicial, as well as legislative restrictions upon the rendition of such judgments, some of the latter constituting prohibitions in effect. 37 Am J1st Mtg § 864.

deficiency on foreclosure. The amount remaining due the creditor after the foreclosure of a mortgage or other security. 37 Am J1st Mtg § 857.

Deficiente uno sanguine non potest esse haeres. Devoid of the same blood (as the alleged ancestor), he cannot be an heir (of that alleged ancestor).

De fide et officio judicis non recipitur quaestio sed de scientia, sive sit error juris, sive facti. The good faith and honesty of a judge are not questioned, but his knowledge, whether it be in error of law or fact, may be.

de fidei laesione. The form of oath made by the defendant in a wager of law. See 3 Bl Comm 343.

defile. To pollute; to corrupt the chastity; to debauch; to violate. *State v Montgomery*, 79 Iowa 737, 738, 45 NW 292.

See **forcibly to defile.**

de filio vet filia rapta vel abducta. A writ for damages for the ravishment or abduction of a son or daughter. See 3 Bl Comm 141.

define. To state the meaning; to describe with exactness. When spoken of space, the word means to set or establish its boundaries authoritatively. *Redlands Foothill Groves v Jacobs* (DC Cal) 30 F Supp 995.

de fine capiendo pro terris. Of taking a fine in lieu of the land,—a writ to secure the release of an attainted juror and his goods on his payment of a fine.

de fine force. Of pure necessity; of absolute necessity.

de fine non capiendo pro pulchre placitando. A writ to prevent the taking of a fine for beaupleader or ill pleading; that is, for not pleading fairly or aptly.

de fine pro redisseisina capiendo. A writ to secure tire release of a disseisor who had made a second disseisin of the same premises.

De Finibus Levatis. Of the fines levied, the title of a statute of the reign of Edward the First providing that the levy of every fine should be read in court.

definienda. To be declared.

definite and permanent source of supply of water. A term familiar in irrigation law, which simply means that a stream carries sufficient water at such intervals as to make irrigation from the stream practicable. 30 Am J Rev ed Irrig § 2.

definite failure of issue. A technical term of the law of estates in real property which applies where a precise time is fixed for the failure of issue, not in express terms, but inferable with reference to any particular time or event, as in the case of a devise to a designated person, but if he dies without lawful issue living at the time of his death, then over. *McWilliams v Havelly*, 214 Ky 320, 283 SW 103.

See **die without issue**.

definitive. Complete and accurate; final; conclusive; effecting a termination of a controversy or a litigation.

definitive sentence. The final judgment of an ecclesiastical court.

deflation. An economic condition wherein money acquires more value, with the consequence that prices are lowered; a condition which more than once in the history of the United States has been followed by a grievous economic depression.

deflected lights. Motor vehicle headlights, the beams of which are deflected downward so as to avoid casting a glare into the eyes of an approaching driver. 8 Am J2d Auto § 707.

defloration. Seduction; the deprivation of a woman's virginity.

deforce. After having lawfully entered and taken possession of land, to withhold it from the true owner or from any other person who has a right to the possession of it. See 3 Bl Comm 172.

See **deforcement**.

deforcement. An abatement, an intrusion, a disseisin, a discontinuance, or any other kind of wrong by which a person who has a right to the freehold is kept out of possession. Sec 3 Bl Comm 172; detention of dower from a widow. 25 Am J2d Dow § 1860.

deforceor. Same as **deforciant**.

deforcians. Same as **deforciant**.

deforciant. In levying a fine of lands, the person against whom the fictitious action is brought upon a supposed breach of covenant, is called the deforciant. See 3 Bl Comm 174. See also 2 Bl Comm 350.

deforciare. To deforce.

de forisfactura maritagii. A writ of forfeiture of marriage.

deformity. Any malformation of a person's body. As the word appears in an application for life insurance: an infirmity of a substantial character which in a material degree impairs the physical condition and health of the applicant, and increases the chance of death, sickness, or accident against which the insurance company is asked to issue a policy. 29 Am J Rev ed Ins § 749.

defossion. An ancient punishment for crime by burying the person alive.

De Frangentibus Prisonam. Concerning those who break prison,—a statute (1 Edw. II, 2) providing that no one should suffer life or limb for prison breach unless committed for a capital offense. See 4 Bl Comm 130.

defraud. To commit acts, omissions or concealments, which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are

[325]

injurious to another, or by which an undue and unconscionable advantage is taken of another. *Petrovitzky v Brigham*, 14 Utah 472, 47 P 666. In other words, to defraud is to commit a fraud.

See **fraud**.

defraudacion. (Spanish.) The fraudulent evasion of payment of taxes.

defunct. Dead; a deceased person; a decedent.

de furto. Of larceny; an appeal of felony for larceny.

de futuro. In the future; for the future; hereafter.

degaster. To commit waste.

de gestu et fama. Of behavior and reputation,—a writ for the redress of an attack upon a person's conduct or reputation.

degradation. A state of disrepute; to the geologist, a process of erosion by the nibbling of a stream at its banks.

de gratia. By favor; by grace.

De gratia speciali certa scientia et mero motu, talis clausula non valet in his in quibus praesumitur principem esse ignorantem. The clauses "of special favor," "of certain knowledge" and "of mere motion" are worthless (in those royal grants) in respect to which the prince is presumed to be ignorant.

degree. Estate or rank in life; an abstract measure of importance or seriousness, as the degree of a crime; an award of rank in having completed a course of study; a distance, as shown on a chart, of 60 nautical miles. *Steamboat Co. v Fessenden*, 79 Me 140.

degree of care. A relative standard by which conduct is tested to determine whether it constitutes negligence. 38 Am J1st Negl § 29.

See **due care; extraordinary care; great care; ordinary care; prudence; reasonable care; slight care; utmost care.**

degree of crime. The grade of a crime according to the gravity of the offense and the culpability of the guilty person, considered, from the practical standpoint, in determining the punishment. 21 Am J2d CrimL§18.

degree of evidence. See **degree of proof.**

degree of proof. The measure of the evidence required in an action, suit, or proceeding, for the establishment of the truth of an allegation pleaded by verdict of the jury or the finding by the court in a trial to the court. In civil actions, the measure is ordinarily preponderance of the evidence. In criminal prosecutions, proof beyond a reasonable doubt is required to convict. 29 Am J2d Ev §§ 1163 et seq.

degrees of kinship. A classification necessitated where descent is to "next of kin" or "nearest of kin," degrees being determined by counting the generations upward from the intestate to the nearest common ancestor, then downward to the claimant, each generation representing one degree. Anno: 54 ALR2d 1012, § 1.

Such is the so-called civil-law method which prevails in most American jurisdictions. There is another method of computing degrees of kinship, known as the common-law or canon-law method. According to this method, degrees are determined by the number of generations from the nearest common ancestor to the intestate or to the claimant, taking the longer of the two lines where they are unequal. Anno: 54 ALR2d 1013, § 1[b].

degrees of negligence. The classes or grades of negligence into which it has been divided by statutes and judicial decisions, ranging from slight negligence to that which is gross, wilful, or wanton.

The majority of common-law authorities have disapproved the concept of dividing negligence according to degrees, but legislative action and even some judicial opinions have injected into the law of negligence the classification of negligence in cases involving certain acts and instrumentalities according to whether it is slight, simple, or gross or whether it amounts to wilful or wanton misconduct. 38 Am J1st Negl §43.

degrees of offenses. See **degree of crime.**

degrees of relationship. See **degrees of kinship.**

De grossis arboribus decimae non dabuntur sed de sylvia caedua decimae dabuntur. Tithes are not given from entire trees, but they are given from cut wood.

de haerede deliberando alteri qui habet custodiam terrae. A writ for the delivery of the heir to another person who has the custody of the land.

de haerede deliberando illi qui habet custodiam terrae. A writ to deliver the heir to the custodian of the land.

de haerede rapto et abducto. For seizing and abducting the heir,—a writ whereby a guardian recovered the custody of his female ward who had been abducted.

de haeretico comburendo. For burning a heretic,—a writ issuing only by special direction of the king for causing one convicted of heresy to be burned to death. See 4 Bl Comm 46.

de haut en bas. Of high and low.

deherison. Disinheritance.

de hoc ponit se super patriam. See **et de hoc ponit se super patriam.**

de homagio respectuando. A writ for the postponement of homage.

de homine capto in withernam. For taking a man in withernam,—a writ for taking, by way of reprisal or retaliation, a person who had himself taken a bondman out of the country.

de homine replegiando. The writ for trying title to a feudal slave or to restore a slave to his master. *Williamson's Case*, 26 Pa 9.

dehors. Outside of; disconnected with; unrelated to; extrinsic.

dehors the record. Outside the record; matters outside the transcript of evidence produced at a hearing by an administrative agency. 2 Am J2d Admin L § 445; matters outside the records of title to realty. 1 Am J2d Abstr T § 6.

[326]

Dei. See **Dei gratia; iudicium Dei.**

de identitate nominis. Of identical name,—a writ to cause the release of a person of the same name as that of the true defendant.

de idiota inquirendo. Of inquisition concerning an idiot; an ancient common-law writ for inquiring whether or not a man was an idiot. See 1 Bl Comm 303.

d'eignesse. See **droit d'eignesse.**

Del gratia. By the grace of God.

De Iis Qui ponendi Sunt in Assisis. Of those who are to be placed on the assizes,—the title of a statute of the reign of Edward the First.

Dei iudicium. The judgment of God. The ancient trial by ordeal was so called.

de incremento. Of increase; added.

de infirmitate. Of infirmity,—an essoin or excuse for failure to appear at court.

de ingressu. A writ of entry, which lay for a tenant who had been wrongfully, dispossessed of his land.

de injuria. An abbreviation of **de injuria sua propria absque tali causa.**

de injuria sua, absque residuo causae. By his own fault, without the rest of the alleged cause.

de injuria sua propria absque tali causa. By his own fault, without such cause; a formal common-law introduction for a defendant's plea in excuse.

de injuriis. Concerning personal injuries. See 3 Bl Comm 120.

de integro. Anew; over again.

de intrusione. A writ of intrusion to oust a person who entered unoccupied premises without color of right.

deists. Persons who entertain a religion which admits no divine revelation as its foundation. *Hale v Everett*, 53 NH 9.

deit. He owes; he is indebted.

dejacion. (Spanish.) An insolvent's surrender of his property to his creditors.

de jactura evitanda. For the sake of avoiding loss; the position of a defendant in an action who is seeking no affirmative relief but merely seeks to bar the plaintiff's recovery. *Jones v Sevier*, 11 Ky (1 Litt) 50.

dejeration. An oath.

De Judaeis. See **Capitula de Judaeis.**

De Judaismo. Of Judaism,—the title of a usury law of the reign of Edward the First.

de judicato solvendo. For the payment of the sum adjudged.

de judiciis. Of or concerning judicial proceedings.

de judicio sisti. For appearing in court.

de jure. By right; by lawful right; rightfully; complying with the law in all respects; valid in law.

de jure communi. At common law.

de jure corporation. A corporation which has been regularly created in compliance with all legal requirements, so that its right to exist as a corporation and exercise its franchise is invulnerable against attack by the state in quo warranto proceedings. 18 Am J2d Corp § 49.

De jure decimarum, originem ducens de jure patronatus, tunc cognitio spectat ad legem civilem, i.e., communem. As to the right of tithes, taking its origin from the right of the patron, then the civil law has jurisdiction of it, that is, the common law.

de jure director. A director of a corporation who has been duly elected or appointed in compliance with law and the charter and bylaws of the corporation. *Hulings v Hulings Lumber Co.* 38 W Va 351, 361, 18 SE 620.

de jure government. A government legally established and legally exercising its authority.

De jure judices, de facto juratores, respondent. The judges decide questions of law, the jurors, questions of fact.

de jure justice of the peace. An officer who has the lawful right or title to the office of justice of the peace, with or without the possession of the office. 31 Am J Rev ed J P § 6.

de jure king. A king by right, one who is the rightful heir of the crown. See 4 Bl Comm 77.

de jure officer. A public officer who is in all respects legally appointed and qualified to exercise the office. 43 Am J1st Pub O § 472; a person who has a lawful right to the office, but who has either been ousted from or has never actually taken possession of the office. Hamlin v Kassafer, 15 Or 456, 15 P 778.

De jure respondent judices, de facto juratores. The judges decide questions of law, the jurors, questions of fact. Piles v Bouldin (US) 11 Wheat 325, 330, 6 L Ed 486, 487.

de la plus belle. Of the fairest part,—a species of dower which was abolished along with the military tenures, of which it was a consequence. See 2 Bl Comm 132.

delate. To charge with crime; to accuse.

de latere. Collaterally.

delatio. An accusation; a charge of crime.

delator. An accuser; a spy; an informer.

delatura. A charge of accusation of crime; a reward for giving information concerning the commission of a crime.

delay. Verb: To obstruct movement; to detain; to put off to a time in the future; to postpone. Noun: An interference with performance; a detention.

See **laches; postponement; unavoidable delay.**

delay days. See **lay-days.**

delaying creditors. Building obstructions to hold creditors where they cannot obtain their lawful demands from assets of the debtor. 37 Am J2d Frd Conv §§ 5 et seq; interposing something unjustifia-

[327]

bly, before creditors can realize what is due them out of the debtor's property. Petrovitzky v Brigham, 14 Utah 472 47 P 666.

delay rentals. Rentals charged on leased gas wells pending delay in production during drilling and development operations. United Fuel & Gas Co. v Railroad Com. 278 US 300, 73 L Ed 390, 49 S Ct 150.

del bien estre. Same as **de bene esse.**

del credere. A term of Italian origin signifying guaranty or warranty.

del credere agent. An agent who guarantees his principal against the default of those with whom contracts are made.

See **del credere factor.**

del credere commission. An additional compensation paid to a factor for undertaking, in case of a sale, to guaranty to his principal the payment of the debt due from the buyer. Duguid v Edwards (NY) 50 Barb 288, 296.

del credere factor. A factor who for an additional commission guaranties the solvency of the purchaser and his performance of the contract. *Pocohontas Guano Co. v Smith*, 122 Va 318, 94 SE 769.

delectus personae. A choice or selection of the person. *Kingman v Spurr*, 24 Mass (7 Pick) 235, 238. The doctrine of delectus personae applies to the selection of a natural person in whose integrity and confidence the donor of a power confides and has no application to a corporation which has been appointed as trustee. *Adams v St. Clair*, 185 Miss 416, 188 So 559.

delectus personarum. A selection or choice of persons.

See **delectus personae**.

delegare. To delegate.

delegate. Noun: A representative; an agent; a person who is substituted for another. Verb: To appoint; to depute; to relegate; to authorize.

delegated legislation. Rules or regulations made and promulgated by an administrative agency. 1 Am J2d Admin L § 93.

delegated power. Authority which has been delegated or bestowed upon a person or body by a superior or higher person or body.

delegates. Representatives; persons authorized to act for others, especially in political conventions and state or national conventions held by religious, fraternal, or social bodies.

See **court of delegates**.

delegatio. (Civil law.) A substitution of debtors.

delegation. The act of conferring authority upon another; the body of delegates or representatives from a particular state or political subdivision, e. g. the delegation from New York in Congress or in the National Convention of the Democratic Party. A novation; a substitution of debtors. *Adams v Power*, 48 Miss 450, 454.

See **imperfect delegation**.

delegation of authority. See **delegation of power**.

delegation of legislative power. An attempt by a legislature to amplicate its legislative power by delegating to another the power to enact a law, whether in form or effect, or to bestow upon another the power to determine the effectiveness of a specific act. 16 Am J2d Const L § 240. There is, of course, a sense of the term "delegation of legislative power," as to which there is no impropriety, that is, the delegation of power made to a legislature by a constitution. 16 Am J2d Const L § 211. It is also well settled that it is within the power of the legislature to delegate to a municipal corporation for municipal purposes, to be exercised within the municipal limits, the three most essential powers of the state, namely, the police power, the power of taxation, and the power of eminent domain. 37 Am J1st Mun Corp § 111.

delegation of powers. An essential in the creation of an agency. 3 Am J2d Agency § 2; the appointment of a subagent by an agent. 3 Am J2d Agency § 152; a vesting of authority in an administrative agency, as to which meticulous precision of language is neither expected nor required. *Russell Motorcar Co. v United States*, 261 US 514, 67 L Ed 778, 43 S Ct 428.

See **delegation of legislative power**.

Delegatus debitor est odiosus in lege. A substituted debtor is obnoxious to the law.

Delegatus non potest delegate. A representative cannot delegate his authority. *Jamesville & Washington R. Co. v Fisher*, 109 NC 1, 13 SE 698. The principle is that where personal trust or confidence is reposed in an agency of the government and especially where the exercise and application of the power is made subject to the judgment or discretion of the agency, the authority is purely personal and cannot be delegated to another unless there is a special power of substitution either expressly or necessarily implied. 2 Am J2d Admin L § 222. The maxim is not applicable to a general agent of an insurance company, since the business of such an agent, either in issuing policies or in soliciting insurance, is not of such a discretionary or personal nature that it cannot be delegated. 29 Am J Rev ed Ins § 148.

de leproso amovendo. A writ for the removal of a leper.

delete. To expunge; to erase; to blot out.

deletion. The obliteration, expunging, or crossing out of words or letters of an instrument, such as a will. 57 Am J1st Wills § 508.

Deliberandum est din quod statuendum est semel. That which is to be settled once and for all should be deliberated at length.

de libera piscaria. A writ of free fishery to enforce a person's exclusive right to fish.

deliberate. Verb: To consider with care; to plan beforehand; to premeditate. Adjective: By plan or design; considered action; avoiding hasty or ill-conceived acts.

By the use of the word "deliberate" in describing a crime, the idea is conveyed that the perpetrator weighs the motives for the act and its consequences, the nature of the crime, or other things connected with his intentions, with a view to a decision thereon; that he carefully considers all these, and that the act is not suddenly committed. *State v Boyle*, 28 Iowa 522, 524.

[328]

deliberate and premeditated. Connoting careful consideration and examination of the reasons for and against a choice or measure; some plan thought out before the commission of the act and a decision to act according to a plan. *People v Bender*, 27 Cal 2d 164, 163 P2d 8; *People v Gonzales*, 87 Cal App 2d 867, 198 P2d 81.

deliberately. Carefully, designedly, unhurriedly.

As used in defining murder, the word means in a cool state of the blood. It does not mean brooded over, considered, reflected upon for a week, a day, or an hour, but it means an intent to kill, executed by a party not under the influence of a violent passion suddenly aroused by some just or lawful cause of provocation to passion, but in the furtherance of a formed design to gratify a feeling of revenge or to accomplish some other unlawful act. *State v Forsha*, 190 Mo 296, 88 SW 505. See also *Commonwealth v Tucker*, 189 Mass 457, 76 NE 127.

deliberate speed in desegregation of schools. A concept enunciated by the United States Supreme Court several years ago after having declared that state laws requiring or permitting segregation of pupils in public schools, that is, denying Negro children admission to public schools attended by white children, were unconstitutional. *Brown v Board of Education*, 349 US 294, 99 L Ed 1083, 75 S Ct 753. The concept has never countenanced indefinite delay, although it was once recognized that a court properly might conclude that the relevant facts in a particular case justified school authorities in not attempting immediate nonsegregated admission of all qualified Negro children. *Cooper v Aaron*, 358 US 1, 20, 3 L Ed 2d 5, 19, 78 S Ct 1401. But much time has passed since the issue first arose, and it is to be said now that delays in the segregation of public school systems are no longer tolerable. *Bradley v School Board of Education*, 382 US 103, 15 L Ed 2d 187, 86 S Ct 224.

deliberate violation. An unexcused or wilful violation. 8 Am J2d Auto § 705.

deliberation. A careful and thoughtful consideration; slowness in action; thinking and reflecting, having volition to make a choice and refrain from doing the homicidal act. No particular period of time is essential to "deliberation" as an element of murder in the first degree. A very brief period will suffice, provided the formed intent to kill was consciously conceived in the mind of the slayer before the homicidal act was committed. 26 Am J1st Homi § 42.

See **premeditation.**

de libero passagio. A writ of free passage, which lay to enforce a right to pass over private water.

de libertate probanda. For proving freedom,—a writ whereby a villein might establish his status as a freeman.

de libertatibus allocandis. A writ to enforce certain liberties of burgesses and citizens.

Delicatus debitor est odiosus in lege. A luxurious debtor is detestable to the law.

de licentia transfretandi. A writ for leave to cross the sea.

delict. A tort; a wrong; a criminal offense; a misdemeanor.

delicti. See **corpus delicti.**

delicto. See **ex delicto; flagrante delicto; in delicto.**

delictum. A wrongful act; a tortious act; a criminal act; a misdemeanor. See 3 Bl Comm 117.

See **actions ex delicto; ex delicto.**

delictus. See **delictum; locus delicti.**

delimit. To limit; to mark with a boundary line.

delineate. To picture or describe by drawn lines, as by lines made on a map.

delinquency. A failure or omission of duty, a fault, a misdeed, an offense, a misdemeanor, a crime. *People's Sav. Bank v Retail Merchants Mot. Fire Ins. Co.* 146 Iowa 536, 123 NW 198.

See **delinquent children.**

delinquency proceeding. A proceeding in juvenile court, usually civil in nature for the purpose of placing a delinquent child under the control of the court; a proceeding in juvenile court for an adjudication of the status of a child in the nature of a guardianship imposed by the state as *parents patriae* to provide the care and guidance that under normal circumstances would be furnished by the child's parents. 31 Am J Rev ed Juv Ct § 53; within the meaning of the Uniform Insurers Liquidation Act, a proceeding for the rehabilitation of an insurance company in financial difficulties. Anno: 46 ALR2d 1186.

Delinquens per iram provocatus puniri debet mitius. A wrongdoer who has been provoked to anger ought to be punished less severely.

delinquent. Noun: A person failing in duty; a person offending by neglect of duty. *Peoples Sav. Bank v Retail Merchants' Mut. Fire Ins. Co.* 146 Iowa 536, 123 NW 198; a person whose acts do not measure up to the proper standard of conduct expected of civilized people. Adjective: Guilty of improper conduct; behind in payment of an obligation.

See **delinquent children**.

delinquent children. A generic term. Children who have committed offenses against the law, or who are found to be falling into bad habits, or who knowingly associate with vicious or immoral persons, or who are growing up in idleness and crime. 31 Am J Rev ed Juv Ct § 36; children who have committed acts which but for the ages of the perpetrators would be criminal offenses punishable as such. State v Dubray, 121 Kan 886, 250 P 316.

As used in juvenile laws the terms "incurability" and "delinquency" are two different offenses. The former has in it the element of continuous disobedience of parental commands, viciousness, and general bad conduct. The latter may be, and often is, a single offense-violation of any law of the state or any city or borough ordinance. Anno: 45 ALR 1533, s. 85 ALR 1099.

delirious. See **delirium**.

delirium. A state of mind in which a person is wholly unconscious of surrounding objects or conceives them to be different from what they really are; a state of mind in which the mind acts without being directed by the power of volition which is partially or entirely suspended. 29 Am J Rev ed Ins Per § 3.

delirium febrile. A fever accompanied with delirium.

delirium tremens. A mental disease brought on by the use of intoxicants, 21 Am J2d Crim L § 44; a

[329]

form of insanity resulting from the collapse of the human system as a result of habitual drunkenness, immediately produced by sudden abstinence from liquor. 29 Am J Rev ed Ins Per § 3; known as "mania a potu" in the extreme stage where the victim is virtually a madman, deprived of all reason for intermittent periods during which he sustains attacks or so-called fits. State v Reidell, 14 Del (9 Houst) 470, 473, 14 A 550.

delito. (Spanish.) A crime.

deliver. To hand over; to surrender possession to another. Marcus v Pennsylvania Trust Co. (CA3 Pa) 23 F2d 303; to give forth, as a speech; to assist in the birth of a child.

deliverance. A delivery; the verdict of a jury.

delivered. Delivery completed.

A child is delivered only when it is born alive. State v Joiner, 11 NC (4 Hawks) 350, 353. The fact that a bastard child was born dead before institution of a proceeding to recover the expenses incident to its mother's confinement precludes the maintenance of the proceeding where the statute which authorizes it contemplates that the child be born alive in providing for the making of a provision for the child's support, and that it may be instituted by a woman if "pregnant with child which, if born alive, may be a bastard child" and that "before proceeding to trial the complainant must file a declaration stating that she has been delivered of a bastard child begotten by the accused." Inman v Willinski, 144 Me 116, 65 A2d 1, 7 ALR2d 1390.

delivering carrier. The carrier performing the line-haul service nearest to a point of destination, not a carrier performing merely a switching service at the point of destination. 49 USC § 20 (11).

delivery. A handing over; the surrender of possession to another; a release from imprisonment.

As used in a statute against fraudulent conveyances, the word implies the surrender of the control of the property by the vendor and the assumption of possession by the vendee, and mere words will not constitute such a delivery. O. W. Perry CO. v Mullen, 81 Mont 482, 263 P 976, 56 ALR 514.

For some purposes, a delivery is accomplished by nothing more than making a thing available to another, placing it within his reach, notwithstanding there is no actual handing of the thing from one person to another. *Ross v Pan American Airways*, 299 NY 88, 85 NE2d 880, 13 ALR2d 319 (airline ticket).

See **claim and delivery; conditional delivery; constructive delivery; jail delivery; writ of delivery**; also terms and expressions beginning **delivery** which follow.

delivery as an escrow. A delivery on some collateral condition, which must be consistent with the contract, on the happening of which condition alone the contract is to take effect. 28 Am J2d Escr § 1.

delivery bond. A bond, otherwise known as a forthcoming bond or a redelivery bond, given by the defendant in an action aided by attachment, in obtaining the release of the attached property from the custody of the officer who seized it under the writ of attachment, although not from the lien of the attachment, the condition of the bond being that if judgment in the action is rendered against the defendant, the property shall be forthcoming to satisfy the execution on such judgment, otherwise that the sureties will be bound to the extent of the value of the property, in some instances, and to the amount of the indebtedness in other instances. 6 Am J2d Attach § 523; a bond containing comparable conditions given in obtaining the release of property seized under a writ of execution. 30 Am J2d Exec § 277; a bond furnished by the defendant in a replevin action in having the property replevied returned to him. 46 Am J1st Replev § 86.

delivery by carrier. The surrender of the goods by the carrier to the right person, in a proper manner, and at a proper place and time. 13 Am J2d Car § 406.

delivery of bastard child. The birth of a child to parents not husband and wife; for some purposes the birth of a live child. *Inman v Willinski*, 144 Me 116, 65 A2d 1, 7 ALR2d 1390.

delivery of bill or note. A voluntary transfer of possession of the instrument. 15 Am J2d Com C § 7.

delivery of deed. A condition of the operative effect of the instrument. A transfer of the instrument from the grantor to the grantee or his agent or to a third person for the grantee's use, in such manner as to deprive the grantor of the right to recall it at his option, and with intent to convey title. *Marshall v Marshall*, 140 Cal App 2d 475, 259 P2d 131. A transfer of possession, either actual or constructive, from one person to another. Uniform Negotiable Instruments Act § 191.

delivery of gift. An actual, symbolical, or constructive transfer of possession of the subject matter to the donee personally or to some person acting as his agent, trustee, guardian, or bailee, the operation of physically handing over giving way at times, as where the subject matter is bulky, to such acts and declarations as the situation reasonably permits, it being essential, however, whatever the act employed may be, that it manifest the donor's intention to divest himself of title and possession. 24 Am J1st Gifts §§ 24 et seq.

To make a valid gift of corporate stock by assignment on a separate document, the Uniform Stock Transfer Act requires delivery of both the separate document and the stock certificate. *Lyons v Freshman*, 124 Mont 485, 226 P2d 775, 23 ALR2d 1165.

delivery of insurance policy. An insurance policy becomes effective as by the delivery of the instrument where it appears that there is an intention to part with the control of the instrument and to place it in the possession or control of the insured, or some person acting for him, and an act evincing such a purpose. 29 Am J Rev ed Ins § 216. Mailing or otherwise delivering a policy to the agent of the insurer with unconditional instructions to deliver the instrument to the insured is generally deemed sufficient to constitute a delivery of the policy. *Mutual Life Ins. Co. v Otto*, 153 Md 179, 138 A 16, 53 ALR 487.

delivery of ship. As with other unwieldy property, the delivery may be purely constructive, and may be effected by delivery of the vessel's documents of title, which supplies not merely a symbol, but the mode of enabling the buyer to take actual possession

as soon as circumstances permit. 48 Am J1st Ship § 67. The transfer of a ship at sea by the delivery of a bona fide bill of sale, mortgage, or assignment in trust is valid, even as against the vendor's creditors, although possession is not given at once, provided the vendee takes prompt possession when

[330]

the property comes within his reach. 48 Am J1st Ship § 69.

delivery of warehouse receipt. The voluntary transfer of possession from one person to another. Uniform Warehouse Receipts Act § 58.

delivery order. An order drawn by the owner of goods on the bailee of them, directing their delivery to a third party.

delivery service. The delivery of small packages by messenger or delivery boy, which, under some circumstances, puts the proprietor in a classification of a common carrier. *Portland v Western Union Tel. Co.* 75 Or 37, 146 P 148.

delivery table. The table upon which a woman is placed for delivery in giving birth. Anno: 37 ALR2d 1291.

delivery to carrier. The placing of a shipment in the exclusive possession, custody, and control of the carrier for the purpose of immediate transportation, and an acceptance by the carrier. 13 Am J2d Car § 256. It is a well-established general rule that when goods are to be shipped to the buyer, a delivery by the seller to a carrier designated by the buyer is a delivery to the buyer, on the theory that the carrier is made the agent of the buyer to accept the delivery. 46 Am J1st Sales § 172.

de lucro captando. For the sake of taking a profit. The position of a plaintiff in an action who seeks to gain a profit by maintaining his suit. *Jones v Sevier*, 11 Ky (1 Litt) 50.

de lunatico inquirendo. A writ for an inquisition of lunacy. *Hart v Deamer* (NY) 6 Wend 497, 498.

See **commission of lunacy**.

delusion. A belief based upon a concept for which there is no reasonable foundation and which is ordinarily incredible to a sane person. *Kimberly's Appeal*, 68 Conn 428, 36 A 847. An extreme misconception; partial insanity, sometimes called delusional insanity. 21 Am J2d Crim L § 41.

See **insane delusion**.

delusional insanity. See **delusion; insane delusion; paranoia**.

dem. An abbreviation of **demise**.

See **ex dem**.

Dem. Abbreviation of Democrat, also of Democratic.

de magna assisa eligenda. Of choosing the grand assize; a writ for choosing the grand assize. See 3 Bl Comm 351.

demain. To-morrow. Also, same as **demesne**.

De majori et minori non variant jura. Whether the matter is great or small, the laws do not vary.

de mal de lit. See **essoin de mal de lit**.

de mal de venue. See **essoin de mal de venue.**

De Malefactoribus in Parcibus. Of wrongdoers in the forests,—the title of the statute of 21 Edward I, st. 2 (1293). Under this statute if trespassers in forests, parks, or warrens refused to surrender themselves to the keepers, the keepers might kill them. See 4 Bl Comm 180.

de malo. Of sickness.

de malo lecti. See **essoin de malo lecti.**

de malo veniendi. See **essoin de malo veniendi.**

demand. A claim; a legal obligation; a request to perform an alleged obligation; a written statement of a claim, *Brennan v Swasey*, 16 Cal 141; a requisition or request under a claim of right, *Brackenridge v Texas*, 27 Tex App 513, 11 SW 630; the assertion of a right to recover a sum of money from the person upon whom the demand is made. *Mack v Hugger Bros. Constr. Co.* 153 Tenn 260, 283 SW 448, 46 ALR 389, 392.

See **claim; cross demand; payable on demand; reciprocal demands; statement of demand.**

demanda. A demand.

demand against a decedent. Any debt or claim enforceable in law or equity against a person since deceased which must be presented to his executor or administrator in order to obtain allowance and payment. 31 Am J2d Ex & Ad § 276.

demandant. A person who makes a demand; a plaintiff.

demand certificate of deposit. See **certificate of deposit.**

demand deposit. A bank deposit payable on demand or within a specified number of days after demand. 10 Am J2d Banks § 356.

demand for change of venue. A formal application for change of venue, presenting the ground upon which a change is demanded, and supported by affidavit. 56 Am J1st Ven § 60.

demand for exemption. See **notice of exemption.**

demand for jury trial. A prerequisite in many jurisdictions to a right to a jury trial. The demand is made by filing a formal demand or notice that a jury trial is desired, even by merely placing the case upon the list or calendar of jury cases. 31 Am J Rev ed Jur § 40.

demand for rent on the due date. The ancient common-law rule, as reported by Coke, was "that the landlord must ask for the precise sum due, at a convenient time before sunset upon the day when the rent is due, upon the land, at the most notorious place of it, though there be no person on the land to pay." The details must be strictly observed by the landlord; thus, Coke says "he cannot demand it at the back door of the house but at the fore door." In rejecting the rule as absurdly impractical in modern times, Circuit Judge Frank has delved deeply into a well of medieval lore, concluding convincingly that our ancestors were the slaves of form and that judicial discretion is a product of a later and better world. *United States v Forness* (CA2 NY) 125 F2d 928.

demand for struck jury. A demand for a jury from a panel that is struck or chosen for a particular case, not from the regular panel for the term of court. 31 Am J Rev ed Jur § 90.

demand in attachment. The debt or obligation upon which the remedy of attachment is available. 6 Am J2d Attach §§ 40 et seq. The statutory liability of a stockholder of a corporation arising out of the obligation of the corporation to pay an assessment, is contractual and constitutes a "demand" or "debt" which will support an attachment. *Caldwell v Morfa* (DC Tex) 24 F2d 106.

demand in embezzlement. A demand as a prerequisite to a prosecution for embezzlement must be an actual demand. In civil actions constructive demands may be and are recognized, but not so in the

[331]

criminal prosecution of a defendant for an offense having as one of its statutory ingredients a refusal to pay on demand. *Shoener v Pennsylvania*, 207 US 188, 191, 52 L Ed 163, 165, 28 S Ct 110.

demand in reconvention. The civil-law equivalent of counterclaim. 20 Am J2d Countcl § 5.

demand note. A promissory note payable on demand. 11 Am J2d B & N § 167.

demand oyer. See *oyer*.

demand paper. Commercial paper payable upon demand. 11 Am J2d B & N § 167.

The term "payable on demand" imports that the debt evidenced by the note is already due. The obligation is absolute and present; the only element not fixed with certainty is the time of payment; and as that is at the option of the creditor, and the debtor must be prepared *eo instante*, the time of payment, and with it the statute of limitations, begins to run at once. *Cook v Carpenter*, 212 Pa 165, 61 A 799.

demandress. A female plaintiff.

demands. See **demand**, also terms and expressions following that word, which begin **demand**.

de manucaptione. A writ to compel the sheriff to release a prisoner and take mainpernors or sureties as bail. See 3 Bl Comm 128.

de manutenendo. A writ of maintenance which lay against a person who had committed maintenance.

de me. From me.

demease. Death; demise.

de medietate linguae. Of divided tongue or language. The characterization of a jury composed one-half of English speaking persons and one-half of persons speaking the language of the accused. *Respublica v Mesta* (Pa) 1 Dow 73, 1 L Ed 42.

de medio. Of mesne,—an ancient writ which lay for the tenant against the mesne lord, when the lord paramount had distrained the tenant for the rent due to him—the lord paramount—from the mesne lord. See 3 Bl Comm 234.

de melioribus damnis. For better damages the plaintiff's election to proceed against one defendant after having dismissed the action as to the others.

demembration. The criminal offense of severing a limb from a person's body.

demens. A person who is demented; a person who has lost his mind.

dementenant en avant. From the present time henceforth.

dementia. An impaired state of the mental powers, feebleness of mind. *Dennett v Dennett*, 44 NH 531.

dementia precox paranoid. That form of dementia in which the patient exhibits ideas of persecution and has delusions; mental disorder occurring in early life; sometimes called schizophrenia. *Rasmussen v George Benz & Sons*, 168 Minn 319, 321, 210 NW 75, 76.

De Mercatoribus. The statute 13 Edward I (1285) allowing the charging of lands of a merchant with debts contracted in trade. The statute was also called Acton Burnel. See 2 Bl Comm 160; 4 Bl Comm 426.

demesne. Own; his own; lands of the lord himself which were not held by him of a superior. A manor was a district of land which was held by a lord or great personage, who kept in his own hands as much land as he required for his household. Such lands were called demesne lands. See 2 Bl Comm 90.

demesne, as of fee. There is a distinction between a corporeal inheritance, of which a man is said to be wised in his demesne as of fee, and an incorporeal inheritance, of which he is said merely to be wised as of fee, and not in his demesne, because incorporeal hereditaments are by nature merely collateral to lands and houses, as a rent issuing out of those lands or houses, and the owner has no property, dominicum, or demesne in the thing itself. See 2 Bl Comm 106.

demesne lands. See **demesne**.

demesne lands of the crown. The share of land which was reserved to the crown at the original distribution of landed property, or such as came to it afterwards by forfeitures or other means. These lands were anciently very large and extensive, comprising many manors, honors and lordships, the tenants of which had very peculiar privileges. See 1 Bl Comm 286.

demesnial. Pertaining to a demesne.

demeure. See **en demeure**.

demeyne. See **en demeyne**.

demeyne come de fee. See **en son demeyne come de fee**.

demi. One-half.

demidietas. One-half.

De Militibus. The statute of 1 Edward II (1307) whereby vassals of the king were compelled to be knighted, or to pay a fine. This practice "was exerted as an expedient for raising money by many of our best princes, particularly by Edward the Sixth and Queen Elizabeth." See 2 Bl Comm 69.

demi-mark. A sum of money tendered and paid into court in certain cases in the trial of a writ of right by the grand assize. The amount tendered was six shillings and eightpence. See 3 Bl Comm appendix V.

de minimis. Concerning trifles. *NLRB v Suburban Lumber Co.* (CA3) 121 F2d 829.

de minimis non carat lex. The law is not concerned with trifles. *Loeffler v Roe* (Fla) 69 So 2d 331, 47 ALR2d 319. A maxim leading to the rule that accepts substantial performance as a sufficient performance of a contract, 17 Am J2d Contr § 370; sometimes applied to exclude the recovery of nominal damages, where no unlawful intent or disturbance of a right or possession is shown and where all possible damage is expressly disproved, 22 Am J2d Damg § 2; and applied at other times to preclude reversal on appeal, 5 Am J2d A & E § 790. The maxim has no application to money demands. *Kennedy v Gramling*, 33 SC 367. It will not prevent the recovery of nominal damages for an invasion of one's rights, as by a trespass upon his lands, especially where the invasion, if not penalized, may result in obtaining a prescriptive right. 22 Am J2d Damg § 5.

De minimis non carat praetor. (Roman law.) The praetor does not concern himself with trifles.

[332]

de minis. A writ against threats; that is, a writ to keep the peace.

De minoribus rebus principes consultant, de majoribus omnes. In matters of less importance, rulers take counsel, in those of greater import, the people. See 1 Bl Comm 147, footnote.

Deminutio. Diminution; subtraction; deprivation.

Demisable. Capable of being demised.

demi-sanguie. Half blood.

demise. Noun: A deed, lease, conveyance of the fee or of a life estate; a grant of land. *Chandler v Hart*, 161 Cal 405, 119 P 516; *Atlantic & North Carolina Railroad Co. v Atlantic & North Carolina Co.* 147 NC 368, 61 SE 185. The transfer of property by will. The word, appearing in a lease, implies a covenant on the part of the lessor of good right and title to make the lease. 32 Am J1st L & T § 268. The word also means death, this meaning having originated in the reluctance of people in an earlier time to speak of the possibility of the king's death, preferring to cloak the disaster of his dissolution by referring to it in the less harsh term "demise," the passing of the crown to his heir. Verb: To grant; to lease; to bequeath; to pass on the death of the owner by bequest or inheritance.

demise and re-demise. A kind of agreement which in effect is a mutual leasing of the same land, under which the owner pays only a nominal rental.

demise charter. See **charter of demise.**

demise of the crown. The transfer of the kingdom to a dead king's successor. When we say the demise of the crown, we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual. See 1 Bl Comm 249.

demisi. I have demised; I have let.

demissione. See **ex demissione.**

demissio regis, vel coronae. The demise of the king or the crown. See 1 Bl Comm 249.

de mittendo tenorem recordi. A writ to send the tenor of a record, or to exemplify the record.

demi-vill. One-half of a vill or tithing. A tithing comprised ten freemen and their families.

demo. See **damage.**

democracy. Popular government; rule by the people. Not to be confused with the Democratic Party or the policies of such party.

See **pure democracy; representative democracy.**

de moderata misericordia capienda. A writ for taking a moderate amercement, which lay to reduce an excessive amercement.

de modo decimandi. Of the manner of tithing. A discharge by custom or prescription is where, time out of mind, certain persons or lands have been discharged from the payment of tithes. This immemorial usage is either de modo decimandi or de non decimando. A modus decimandi, often called a "modus," is any means whereby the general law of tithing is altered, and a new method of taking them is introduced. A prescription de non decimando is a claim to be entirely discharged of tithes, and pay no compensation in lieu of them. See 2 Bl Comm 29, 31.

De molendino de novo erecto non facit prohibitio. Prohibition does not lie against a newly erected mill.

demolition loss. A deduction in an income tax return for loss suffered by the taxpayer on the demolition of a building. Commissioner v Estate of Appleby (CAI) 23 172d 700.

de moneta. Concerning the currency.

demonstrate To prove indubitably, as, to demonstrate a proposition of geometry; to teach by exhibition of examples, as, anatomy is demonstrated by exhibition of the dissected parts of the body. Espenhain v Barker, 121 Or 621, 625, 256 P 766.

demonstratio. A description; a designation; a denomination.

demonstration. A designation; a manifestation; a showing.

None but mathematical truth is susceptible of that high degree of evidence, called demonstration, which excludes all possibility of error, and which, therefore, may reasonably be required in support of every mathematical deduction. People v Risley, 214 NY 75, 108 NE 200.

See **false demonstration.**

demonstrative evidence. Usually the equivalent of real evidence. 29 Am J2d Ev § 769. Narrowly, evidence which has no probative value in itself, serving merely as a visual aid to jury or trier of the fact in comprehending the verbal testimony. Smith v Ohio Oil Co. 10 111 App 2d 67, 134 NE2d 526, 58 ALR2d 680.

See **real evidence.**

demonstrative legacy. A legacy which differs from a general legacy in that it refers to a particular fund or particular property as a primary source of payment, the two essentials of such a legacy being an unconditional gift in the nature of a general legacy and a designation of a particular fund or particular property as a primary source of payment but not such a designation as evinces an intent to relieve the general estate from liability if the particular fund or particular property fails as a source of payment. Nusly v Curbs, 36 Colo 464, 85 P 846; Rogers v Rogers, 67 SC 168, 45 SE 176.

demonstrator. An automobile used by an automobile salesman to demonstrate the particular model and type and the operation of the vehicle to a prospective buyer. Anything used to show the operation of a thing of its kind, particularly for the purpose of making a sale. A person who demonstrates things or processes, e.g. a person who makes coffee in a grocery store for the purpose of advertising the brand of coffee used.

De Monticolis Walliae. Of the Welsh mountaineers,—the name given to an ancient statute of the time of King Ethelred, whereby Welshmen, who at that time were aliens, might demand a trial by a jury composed of six Welshmen and six Englishmen. See 3 Bl Comm 360.

demorage. Same as **demurrage.**

Demorari. To demur.

De morte hominis nulls est cunctatio longa. With respect to a man's death no delay is regarded as long.

[333]

de mot en mot. From word to word; word for word.

demotion. The lowering of the grade of a civil service officer or employee. 15 Am J2d Civ S § 33.

dempster. Same as **deemster.**

demur. To interpose a demurrer; to hesitate; to object.

demurrable. Subject to attack by demurrer.

See **demurrer.**

demurrage. A sum of money due by way of compensation for the loss of earnings of a vessel by an improper delay or detention of the vessel. 48 Am J1st Ship § 606. A word derived from the maritime law but applied to railroad cars, meaning, in this respect, the charges imposed by a carrier by rail for the detention of the cars beyond the time reasonably required for the loading or unloading thereof. 13 Am J2d Car § 480.

demurrage lien. The lien of a carrier by rail upon a shipment for unpaid demurrage charges. 13 Am J2d Carriers § 501. The lien of a shipowner upon cargo for demurrage charges unpaid, enforceable in admiralty by an action in rem. 48 Am J1st Ship § 615.

demurrant. A party to an action who interposes a demurrer to a pleading of an adverse party.

demurrer. A method of raising an objection to the sufficiency in law of a pleading. 27 Am J2d Eq § 299; 41 Am J1st Pl § 204.

While demurrers are abolished in many jurisdictions by statute, the abolition is superficial, being essentially one of terminology, the office of the demurrer being performed under the new and simplified systems of pleading by motion or answer. 41 Am J1st Pl § 204.

demurrer book. A transcript of the pleadings in an action leading up to an issue of law.

demurrer ore tenus. A demurrer made orally at the time of argument in support of a demurrer of record, pointing out the defect in the pleading to which it is addressed. *Wetherell v Eberle*, 123 Ill 666, 14 NE 675. A demurrer in the form of an

objection to evidence on the ground that the complaint, declaration, or petition fails to state a cause of action. *Cleveland v Bateman*, 21 NM 675, 158 P 648.

demurrer to evidence. A method of taking a case from the jury, being an objection made by the defendant to the plaintiff's evidence as a whole, which concedes the truth of all that the evidence tends to establish in favor of the plaintiff, but that the facts thus conceded do not establish in law a right to recover. The use of a demurrer to evidence is rare in modern practice; it has been supplanted by a motion for a directed verdict or the equivalent of such motion. 53 Am J1st Trial §§ 427, 428.

demurrer to form. A special objection to a pleading on grounds of form rather than substance. 41 Am J1st Pl § 206.

See **demurrer**.

demurrer to indictment. A pleading attacking the sufficiency of an indictment for a defect which appears on the face of the indictment, the failure to state an offense, or the failure to state an offense with the clearness and precision required in an indictment. 27 Am J1st Indict § 144.

demurrer to interrogatory. A reason offered by a witness for refusing to answer a question.

demurrer to plea. A method by which the plaintiff tests the sufficiency of the answer or plea of the defendant; such a demurrer calls into question the sufficiency in law of the plaintiff's own pleadings, and all the facts and attendant circumstances revealed in all the pleadings must be taken into consideration in determining the demurrer. 41 Am J1st Pl § 234. A method of objecting to the sufficiency in law of a special plea by the defendant in a criminal case. 21 Am J2d Crim L § 465.

demurrer to plea in abatement. A method by which the plaintiff tests the legal sufficiency of the defendant's plea in abatement. 41 Am J1st Pl § 211.

demurrer to substance. A demurrer testing the sufficiency of a pleading in respect of a matter of substance. 41 Am J1st Pl § 211.

demurrer to the jurisdiction. A demurrer to plaintiff's pleading which raises the objection of a want of jurisdiction over the person of the defendant or the subject matter of the suit apparent on the face of the pleading. 41 Am J1st Pl § 213.

demurrer to the person. A demurrer raising the question of the competency of the plaintiff to maintain the suit. 39 Am J1st Parties § 105.

demy sangue. Same as **demi sangue**.

demy sanke. Same as **demi sangue**.

denarii. Plural of **denarius**.

denarius. A Roman silver coin equivalent to about fourteen cents. Also, the English pence.

denarius Dei. God's penny,—earnest money given to bind a bargain.

denarius Petrii. Peter's penny or Peter's pence,—an annual general contribution to the Pope.

de nativo habendo. A writ which lay for the lord of the manor to secure the return of a fugitive villein.

denaturalize. To deprive a person of his citizenship, whether acquired by naturalization or not.

denatured. Deprived of natural qualities; changed in nature.

See **denatured alcohol.**

denatured alcohol. Alcohol which has been so adulterated with poisonous or other chemicals as to render it fatally dangerous or otherwise unfit for use as a beverage.

denaturized. Same as **denatured.**

denial. A contradiction; a traverse; a withholding; a refusal to grant; a refusal. In pleading, a controverting of affirmative allegations in the pleading of an adversary.

Under the Federal Rules of Civil Procedure, a denial of statements made in a plaintiff's demand for admissions is not made by a denial of "the accuracy" of statements made in the demand, or by a refusal "to admit the truth" of such statements. *Southern R. Co. v Crosby* (CA4 SC) 201 F2d 878, 36 ALR2d 1186.

See **general denial; negative pregnant; specific denial.**

denier. A penny.

denier a Dieu. Same as **denarius Dei.**

De nihilo, nil. Nothing out of nothing. A void contract can no more give rise to a right

[334]

of action than a void deed can create title in the grantee. *West Maryland R. R. Co. v Blue Ridge Hotel Co.* 102 Md 307, 62 A 351.

denization. A proceeding known to the English by which an alien acquires the status of a denizen. *McClenaghan v McClenaghan*, 32 SCL (1 Strobb) 295.

See **denizen.**

denize. To effect a denization.

See **denization.**

denizen. One in a middle state between an alien and a natural born citizen, and who, though subject to some of the disabilities of the former, is entitled to many of the privileges of the latter. 3 Am J2d Aliens § 1.

Denman's Act. See **Lord Denman's Act.**

denominatio. A denomination.

See **denomination.**

Denominatio est a digniore. Denomination is from the more worthy.

Denominatio fieri debet a dignioribus. Denomination should be made from the more worthy.

denomination. Name; the act of naming. A coin of a stated value. A religious society of a particular faith, the name usually being carried in some form by members in professing the faith, e. g. "Methodists," "Presbyterians," "Baptists," etc.

De nomine proprio non est curandum cum in substantia non erretur; quia nomina mutabilia sunt, res autem immobiles. As to the proper name, it is not to be regarded when there is no substantial error, because names are changeable; but things, that is, facts, are not.

De non apparentibus et de non existentibus eadem est ratio. The same reasoning applies to those things which are not proved as to those which have no existence. *United States v Wilkinson* (US) 12 How 246, 253, 13 L Ed 974, 977.

De non apparentibus, et non existentibus, eadem est lex. As to matters which are not proved and as to those which do not exist, the law is the same. *State ex rel. Lasserre v Michel*, 105 La 741, 30 So 122.

de non decimando. See **de modo decimando**.

de non desidentia clerici regis. A writ to exonerate a clergyman abroad in the service of the king for his non-residence.

de non procedendo ad assisam. A writ to prohibit the judges of the assize from proceeding with the cause.

de non sane memorie. Of unsound memory,—of unsound mind.

denouncement. Same as **denuncia**. A denunciation. The reporting of a mine to the authorities as unoccupied or abandoned; the claiming of the right to work a mine; the reporting of the discovery and pre-emption of a mine; the claiming of a mine as a new one. *Stewart v King*, 85 Or 14, 166 P 55.

See **denunciation**.

de novo. Anew; over again; a second time. See 1 Bl Comm 186.

See **trial de novo**.

de novo trial. See **trial de novo**.

dense smoke. Dark smoke as it comes from the smokestack or where common chimney soft or bituminous coal is used for fuel in any considerable quantities. *St. Paul v Haugbro*, 93 Minn 59, 100 NW 470. Also the smoke created by the burning of certain types of heating oil.

dentist. One whose profession is to clean and extract teeth, repair them when diseased, and replace them, when necessary by artificial ones; one sometimes said to be a surgeon practicing upon teeth. 41 Am J1st Phys & S § 2.

dentistry. The profession of the dentist; a medical science concerned with the teeth and the care of teeth.

See **dentist**.

dentists' liability insurance. A form of liability insurance which protects a dentist against loss resulting from his liability for acts or omissions in the treatment of a patient. 29A Am J Rev ed Ins § 1358.

Dent operam consoles ne quid respublica detrimenti capiat. Let the consuls take heed lest the state suffer harm. See 1 Bl Comm 136.

Dentur omnes decimae primariae ecclesiae ad quam parochia pertinet. Let all tithes be given to the head church to which the parish belongs. See 1 Bl Comm 112.

De nullo, quod est sua natura indivisibile, et divisionem non patitur nullam partem labebit vidua, sed satisfaciat ei ad valentiam. A widow shall have no part of that which is in its own nature indivisible, and will not suffer division, but she shall be satisfied with its value.

De nullo tenemento, quod tenetur ad terminum, fit homagii, fit tamen inde fidelitatis sacramentum. There is no homage in a tenement for a term of years, but in such case there is the oath of fealty (to the lord).

denumeration. A payment down at the present time.

denuncia. A judicial proceeding under Spanish-American law to establish a claim to real property which had been acquired by another without observing the requirements of the law. In its substantive characteristics, the denouncement or denuncia was equivalent to the inquest of office found of the common law. *De Merle v Mathews*, 26 Cal 455, 477.

denunciatio. The condemning of a person, a practice, or an idea as evil; the reporting of a person to the authorities as one to be prosecuted.

See **denouncement; denuncia.**

denuntiatio. A public notice; a bulletin.

deny. To deny means to withhold, to refuse

[335]

to grant. To contradict. *Beck v Allen*, 58 Miss 143, 162.

See **denial.**

deodand. Any chattel which caused a person's death, and which was in consequence, under the old common law, forfeited to the crown. *Goldsmith-Grant Co. v United States*, 254 US 505, 65 L Ed 376, 41 S Ct 189. See also *Fields v Metropolitan Life Ins. Co.* 147 Tenn 464, 249 SW 798, 36 ALR 1250, 1251.

deodand for pious uses. See **pious uses.**

de odio et atia. For hatred and ill will,—an ancient writ which was directed to the sheriff, commanding him to inquire whether a prisoner charged with murder was committed upon just cause of suspicion, or merely propter odium et atiam, for hatred and ill will. If the inquisition showed the latter cause, another writ issued for the sheriff to admit the prisoner to bail. See 3 Bl Comm 128.

de office. Of office; officially.

De Officio Coronatoris. Of the office of coroner,—the statute of 4 Edward the First (1276) prescribing the principal functions and duties of the coroner, and specifically, his duties in holding inquests. See 1 Bl Comm 348.

de onerando pro rata portione. A writ which lay for a tenant in common or a joint tenant to compel his cotenant to contribute rent.

de outre mere. See **essoin de outre mere.**

de pace et imprisonmento. A writ in the nature of an appeal of crime for breach of the peace and imprisonment.

de pace et legalitate tuenda. A writ for keeping the peace and good conduct.

de pace et plagis. A writ for breach of the peace and wounding.

de pace et roberia. A writ for breach of the peace and robbery.

de pace infracta. A writ for breach of the peace.

de palabra. By parol; oral.

de parco fracto. For breaking into a pound. When goods had been distrained and had been actually impounded, and had been taken out of the pound by force, the distrainor had his remedy by the writ of pound-breach, or de parco fracto. See 3 Bl Comm 146.

depart. To go away; to part; to partition; to divide; to separate; to change the cause of action or defense in amending a pleading or in pleading further by way of reply or other subsequent pleading. 41 Am J1st Pl §§ 184, 185.

See **departure.**

de partitione facienda. For making partition,—a writ for the partition of lands of coparceners.

department. A division of the executive department of the national or state government.

departmental doctrine. A limitation of the fellow servant rule to employees engaged in the same department of the employer's business or establishment. 35 Am J1st M & S § 382.

department head. See **head of a department.**

department of government. One of the three great divisions of government between which the powers of the United States Government are separated, namely the legislative, executive, and judicial departments. A comparable division in a state. A part or division of the executive branch of the government of the United States, such as the Justice Department, State Department, etc. 54 Am J1st US § 39. A division of the executive branch of a state government, even of a municipal government.

See **cabinet; head of a department.**

department rule. An administrative regulation or order. 2 Am J2d Admin L §§ 277 et seq.

See **departmental doctrine.**

department store. A big merchandising establishment, divided into departments according to the kind of merchandise handled, such as men's wear, ladies' wear, groceries, shoes, hardware, etc., often having branches established and operating in suburban locations.

department store index. An index of department store prices, grouped according to the various categories of goods, such as infant's wear, women's underwear, men's furnishings, notions, etc., prepared by the Bureau of Labor Statistics.

departure. A leaving, such as the departure of a bus from the station; a turning aside from a usual route. A changing of the cause of action or defense alleged in a pleading, either in substance or the law upon which it is founded, in an amendment to the pleading, a reply, rejoinder, or other subsequent pleading. 41 Am J1st Pl §§ 184, 185.

The test whether new matter introduced by the way of an amendment is a departure is whether a different character of evidence is required for its support than would be required for proof of the antecedent pleading and whether proof of additional facts will be required to sustain the later pleading. *Gerstel v William Curry's Sons Co.* 155 Fla 471, 20 So 2d 802.

See **deviation**.

departure in amended pleading. A change in the cause of action or defense pleaded in the original complaint or answer by an amendment thereto. 41 Am J1st Pl § 306.

departure in despite of court. The failure of a tenant to appear in court in a real action against him on being summoned, although he had appeared previously.

depasture. To pasture; to graze; to denude of grass or feed; to strip.

depeculation. The embezzlement of public moneys.

depend. To be subject to a contingency; to hang upon a condition. To look to another for support.

dependency. A colony of a country; a territory which is subordinated to the authority and laws of a mother country. 29 Am J Rev ed States § 7. The status of a dependent person.

See **dependent**.

dependent. The status of one in need of aid or support because he entirely or partially lacks the means of supporting himself, *Utah Fuel Co. v Industrial Com.* 80 Utah 105, 15 P2d 297, 86 ALR 858; one who looks to another for support and maintenance.

[336]

58 Am J1st Workm Comp § 162. One who is sustained by, or who relies for support upon, the aid of another. *Royal League v Shields*, 251 Ill 250, 96 NE 45. One entitled to support as a wife or child, even an illegitimate child entitled to support. 30 Am J Rev ed Intox L § 534. One in such relationship to the taxpayer that the latter is granted an exemption for him in making return for income tax. IRC § 151(e).

See, **dependent child; partial dependent; support; total dependent**.

dependent bill. A bill in equity, otherwise known as a "bill not original," being a pleading relating to some matter already litigated in the court by the same parties and depending on the prior suit; that is, it supplements or continues the former suit or seeks relief in respect of some matter growing out of that suit and connected with it. 27 Am J2d Eq § 179.

dependent child. A term applied to a normal child without means for self-support who must be supported by someone other than the person to whom he naturally could look for support, that is, a parent or guardian. *Re Souers*, 135 Misc 521, 238 NYS 738. Dependency on the part of a child is something different from the right of the child to have support, or the duty of a parent to support his children. The mere fact that the father is legally and morally bound to support his children does not necessarily establish that they are either partly or wholly dependent upon him. Dependency connotes the need of aid or support by one who entirely or partially lacks the means of supporting himself. 39 Am J1st P & C § 2.

As used in statutes providing for the care of dependent, neglected and delinquent children, the term means dependent upon the public for support. *State ex rel. Steams County v Klasen*, 123 Minn 382, 143 NW 984; any child under the age of 18 who is destitute, or whose home by reason of neglect by the parents or either of them is an unfit place for such child, or whose father, mother, guardian, or custodian, does not properly provide for such child. *Re Hudson*, 13 Wash 2d 673, 126 P2d 765. The statutes on dependent children usually define what is meant by the expression "dependent child." It is said that a legislative

classification of dependent children as distinguished from delinquent children is not unreasonable. Under some statutes, however, the terms "dependent child" and "delinquent child" are largely synonymous. 31 Am J Rev ed Juv Ct § 38.

See **delinquent children; neglected children.**

dependent contract. A contract the performance of which depends upon the performance of another contract.

See **dependent covenants.**

dependent covenants. Covenants made by the parties to a deed or agreement which are of such character that the act covenanted to be performed enters into the whole consideration for the covenant or promise on the other part, or where the acts or covenants of the parties are concurrent and are to be performed at the same time, so that neither party can maintain an action against the other without first proving full performance on his part. 20 Am J2d Cov § 8. A "dependent covenant" in a contract for the sale of land is one which depends upon the prior performance of some act or condition or, as otherwise defined, an agreement to do or omit to do something with reference to a thing on which it depends and to which it relates. 55 Am J1st V & P § 102.

dependent jurisdiction. Another term for ancillary jurisdiction.

See **ancillary jurisdiction.**

dependent person. See **dependent; dependent child.**

dependent proceeding. An action or proceeding in which the court exercises dependent or ancillary jurisdiction.

See **ancillary jurisdiction; ancillary proceeding.**

dependent promises. Promises in a bilateral contract which are mutually dependent, that is, the one promise is the condition of the enforcement of the other. 17 Am J2d Come § 322; 55 Am J1st V & P § 102.

See **dependent covenants.**

dependent relative revocation. The doctrine that if a testator revoke a will with a present intention to make a new will as a substitute for the old, and the new will is not made, or if made fails of effect for some reason, it will be presumed that the testator preferred the old will to intestacy, and this testament will be given effect. 57 J1st Wills § 514. The doctrine is also known as that of "conditional" or "provisional" revocation.

dependents. See **dependent.**

dependent stipulations. Mutual agreements which go to the whole of the consideration on both sides of a contract. 55 Am J1st V & P § 102.

See **dependent covenants; dependent promises.**

depending. Relying on; being conditional or contingent on something. Ancient usage seems to have included the meaning of "pending," so that a "depending action" was a "pending action." 3 Bl Comm 450.

See words and phrases beginning **dependent.**

de perambulatione facienda. A writ for the establishment of a boundary line.

de persona. See **constat de persona.**

depesas. A word found in Spanish-American grants signifying spaces of ground reserved in the vicinity of a town, when it was being laid out, for commons or public pasturage. *Strother v Lucas* (US) 12 Pet 410, 442, footnote, 9 L Ed 1137, 1150, footnote.

de pignore surrepto furti, actio. (Roman law.) An action to recover a stolen pledge.

de placito. Of a plea.

de plagis et mahemio. A criminal appeal for wounding and mayhem.

de piano. Clearly; immediately.

de plegiis acquietandis. A writ under which a surety could compel his principal to reimburse him for loss.

de pleine age. Of full age.

depletion deduction. A deduction allowed in an income tax return to the owner of an economic interest in mineral deposits or standing timber. IRC § 613(a).

de pone. A writ to remove a cause to superior court.

depone. To depose; to give a deposition.

[337]

de ponendo sigillum ad exceptionem. A writ to place the court seal on an exception taken to a ruling of the court.

deponent. One whose deposition is given. 23 Am J2d Dep § 1; a witness; an affiant; a person who gives testimony under oath or affirmation, whether by deposition, affidavit, or otherwise. *Bliss v Shuman*, 47 Me 248, 252.

deponer. A deponent.

depopulatio agrorum. Laying waste the fields, the crime of destroying or ravaging a country, bordering upon treason. See 4 Bl Comm 373.

deportation. The expulsion of an alien from the country. 3 Am J2d Aliens § 71; a maritime tort, if illegal. 2 Am J2d Adm § 78.

Under the Federal statute providing that an alien's deportation must take place within three years after his entry, the time is not determined by the date of his actual deportation but by the date of his arrest for that purpose. *United States ex rel. Filippini v Day* (DC NY) 18 F2d 781.

See **to the country whence they came.**

deportation proceeding. An administrative proceeding conducted by immigration officers to determine by hearing whether or not an alien should be deported, and, if the finding is in the affirmative, to issue an order and warrant for deportation. 3 Am J2d Aliens §§ 82 et seq.

depose. To state or affirm a fact by affidavit or deposition; in a broader sense, to testify as a witness; to remove from an office, or position of authority, particularly a king.

deposit. Verb: To put down, as a deposit of earnest money; to put money or things in a place for storage or safekeeping; to put money in a bank at interest or on checking account. Noun: An accumulation; money or an article deposited.

See **bank deposit; certificate of deposit; depository; deposit for collection; deposit in court; depositor; depositors' guaranty fund; general deposit; joint deposit; special deposit.**

depository. A person, firm or corporation receiving a deposit for safekeeping; a depository.

See **depository.**

deposit box. See **safe deposit box.**

deposit company. See **safe deposit company.**

deposited for record. See **filed for record.**

deposit for collection. A transaction wherein a customer delivers commercial paper to a bank and the bank undertakes as agent for the customer the duty of making the collection. 10 Am J2d Banks § 403.

deposit in court. A payment or delivery into court, pursuant to court order, of money or anything capable of delivery. 24 Am J1st Funds & D §§ 1-3.

See **payment into court.**

Deposit Insurance Corporation. An agency of the United States established for the purpose of insuring bank deposits by setting up a permanent insurance fund for that purpose and the payment of deposits upon the closing of any insured bank, to preserve the solvency of insured banks, and to keep open the channels of trade and commercial exchange. 10 Am J2d Banks § 427.

deposit in trust. See **trust deposit.**

deposition. The written testimony of a witness given under oath in the course of a judicial proceeding, either at law or in equity, in advance of the trial or hearing, upon oral examination or in response to written interrogatories and where an opportunity is given for cross-examination; in a less refined sense, an affidavit, an oath; a statement under oath. 23 Am J2d Dep § 1.

See **deposition de bene esse; in perpetuum rei memoriam; letter rogatory.**

deposition de bene esse. A deposition taken during the pendency of an action for use as evidence therein, provided the personal attendance of the witness for oral examination cannot be secured. 23 Am J2d Dep § 2.

deposito. (Spanish.) A bailment of goods which is determinable at the will of the bailor.

deposit of earnest money. See **earnest money.**

depositor. One who makes a deposit, particularly one who makes a deposit in a bank whether on open account, special account, or at interest, the term including the holder of a certificate of deposit, but according to some definitions, not the holder of a cashier's check or certified check. Re Citizen's State Bank, 44 Idaho 33, 255 P 300 (statutory definition).

A depositor is not the owner of any specific money in the bank. He is simply the owner of a right and credit against the bank. Wright v Holmes, 100 Me 508, 62 A 507. But as used in bank guaranty laws, the word depositor should be taken in its commonly understood sense, and not so as to include creditors generally, who would not in common parlance, be regarded as depositors in a bank. Anno: 111 ALR 229.

depositors' guaranty fund. A fund to which the banks of a state contribute according to the amount of their deposits, established for the protection of depositors, that is, to make the currency of checks secure and also to protect the depositors in respect of their deposits. 10 Am J2d Banks § 424.

See **permanent insurance fund.**

depository. A storehouse; a place where money or valuable articles are put for safekeeping; a depositary; an official custodian of monies or other property paid into court under order of court. 23 Am J2d Deposit In Ct § 4; a banking institution designated by the judge of a bankruptcy court as the place of deposit of the funds of estates in bankruptcy. 9 Am J2d Bankr § 1240.

As used in a criminal statute forbidding the possession of tools and implements adapted and designed for forcing or breaking open a building, room, vault, safe, or other depository, the term is not confined to depositories substantially similar to vaults or safes, but extends to whatever is commonly used for the safekeeping of money or other personal property. Commonwealth v Tilley, 306 Mass 412, 28 NE2d 245, 129 ALR 381.

deposit slip. A slip of paper containing entries made by the person making a bank deposit, showing his name, the amount of cash deposited, and a listing of the checks deposited by the name of the bank upon which drawn or the use of numbers representing the drawee bank, the amount of each character of items deposited, and the total deposit. The rules of the bank in respect of deposits are often printed on the slip. 11 Am J2d B & N § 341.

deposits tax. See **bank deposits tax.**

[338]

deposit subject to final payment. See **subject to final payment.**

depositum. (Civil law.) A naked bailment, without reward, of goods to be kept for the bailor, by one who is usually called a depositary. Anne: 4 ALR 1196.

de post disseisina. A writ of post disseisin.

depot. A stopping place for trains or motorbuses where there is a building more or less permanent for the accommodation of passengers and freight.

A railroad depot includes not only a stopping place for railroad trains, but also a building for the accommodation of passengers and freight, together with all passageways, or platforms prepared for passengers in boarding and leaving trains. 44 Am J1st RR § 254.

A place where military stores or supplies are kept or troops assembled. United States v Caldwell (US) 19 Wall 264, 22 L Ed 114. A storehouse.

See **railroad station; union station.**

depot grounds. The grounds or land upon which a railroad station or depot stands, together with such surrounding territory as may be required to satisfy the reasonable convenience and necessity of the public while engaged in transacting business with the railroad company, and which is actually used for such purpose. 44 Am J1st RR § 169.

De Praerogativa Regis. Of the king's prerogative,—the title of the statute 17 Edw. II, c. 11, by which many of the prerogatives of the king were confirmed by parliament. See 2 Stephen's Commentaries 509. This statute affirmed the king's ancient right of committing waste and taking the profits of an attainted felon's land for a year and a day. See 4 Bl Comm 386.

de praesenti. For the present.

depreciated book value—As used in a statute requiring "depreciated book value" of personal property to be considered for purposes of taxation, the term means the cost price of the personal property, including the cost of installation, entered on the books of the company in ordinary course of business, less the depreciation set up on the books in a regular and consistent manner for reflecting such depreciation, including reasonable allowance for obsolescence. *Wheeling Steel Corp. v Evatt*, 143 Ohio St 71, 54 Ne 132.

depreciated value. Cost less depreciation. *Brennan v Brennan*, 164 Ohio St 29, 57 Ohio Ops 71, 128 NE2d 89, 50 ALR2d 1259.

depreciation. The lessening in worth of any property caused by weather, time, and use, including obsolescence and inadequacy. 43 Am J1st Pub Util § 145. A deduction allowed in an income tax return for the gradual loss of usefulness of tangible property used in business or in the production of income. IRC § 167(x).

"Depreciation" for which allowance is to be made in fixing the rate base for a public utility is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property, embracing wear and tear, decay, inadequacy, and obsolescence. *Lindheimer v Illinois Bell Tel. Co.* 292 US 151, 78 L Ed 1182, 54 S Ct 658.

depreciation recapture. An income tax rule whereby a gain on the sale of property is treated as ordinary income, or partly as ordinary income, to the extent of depreciation taken on the property. Internal Revenue Code §§ 1245, 1250.

depredation. The act of plundering; a robbing; a pillaging. *Deal v United States*, 274 US 277, 71 L Ed 1045, 47 S Ct 613. An informal, illegitimate war. 56 Am J1st War § 5.

depressing bids. Stifling or chilling bids at a judicial sale. 30A Am J Rev ed Jud S § 98.

depression. A natural way or means for the drainage of surface water. 56 Am J1st Wat § 76. A disastrous condition of the economy, characterized by unemployment, forced sales of property, and falling prices.

See **Great Depression.**

deprivation. A taking of property, rights, or privileges from a person. An ecclesiastical term applied to one of the several ways in which a parson or vicar may cease to be so. Deprivation may be effected by the sentence of the ecclesiastical court or pursuant to certain penal statutes which declare the benefice void either by reason of the incumbent's omission of duty or his active commission of some forbidden act or crime. See 1 Bl Comm 393.

deprivation without due process. Wherever the operation and effect of any general regulation is to extinguish or destroy that which by the law of the land is the property of any person, so far as it has that effect, it is unconstitutional and void as being a deprivation of property without due process of law. *Brown v Grant*, 116 US 207, 29 L Ed 598, 6 S Ct 357.

deprive. To take from one some property, right, or privilege which he enjoys and which he is entitled to enjoy; to cause a deprivation.

See **deprivation.**

de proavo. Of the great grandfather,—a writ whereby an heir secured land entered upon by a stranger upon the death of the heir's great grandfather who had died wised. See 3 Bl Comm 186.

de probioribus et potentioribus comitatus sui in custodes pacis. From the most excellent and powerful of their county as keepers of the peace. See 1 Bl Comm 350.

de proprietate probanda. For proving ownership,—a writ which lay for a plaintiff who had replevined goods from the possession of a distrainor who thereupon claimed the goods, to try by an inquest before the sheriff and determine in whom the property subsisted prior to the distress. See 3 Bl Comm 148.

depuis. Since.

deputy. One appointed to act for another, a substitute, a delegate, an agent. 37 Am J1st Mun Corp § 273; 43 Am J1st Pub Of § 218. A person who is a subordinate of a public officer, performing the duties of the office under powers conferred for that purpose, but only in the name of the officer, except in jurisdictions where he is recognized as an independent public officer. 43 Am J1st Pub Of §§ 460 et seq.

deputy clerk of court. In some jurisdictions, a mere agent of the principal clerk performing as of right only ministerial acts, but in other jurisdictions, an independent public officer vested with authority to discharge any of the official duties of his principal save that of appointing x deputy. 15 Am J2d Clk Ct §§ 38, 41.

[339]

deputy judge. A paradox; there can be no delegation of judicial authority, hence no deputy judge. State ex rel. Hovey v Noble, 118 Ind 350, 21 NE 244.

deputy sheriff. An officer who acts for the sheriff, in some jurisdictions his powers being limited to the performance of ministerial acts, but in other jurisdictions, being given authority equivalent to that of the sheriff, even authority for the execution of conveyances of lands sold under execution. 47 Am J1st Sher § 154.

de quarentina habenda. For securing her quarantine,—a common law writ whereby a widow might secure her right of quarantine, that is, to continue to occupy the mansion house or other dowable residence of her husband for forty days after his death. Aikin v Aikin, 12 Or 203, 6 P 682.

de ques en òa. From which time until the present.

de quibus. Of which things or persons.

de quibus sur disseisin. A kind of writ of entry.

de quo. Of which; of whom.

de quodam ignoto. From a certain person unknown.

de quota litis. (Civil law.) An agreement for a contingent fee.

de quoy. Of which.

deraign. To prove; to prove in detail; to vindicate; to prove by disproving the allegations of an adversary.

derainment of title. A statute requiring the complainant to set forth the "derainment of his title" means that he must show (a) title in himself from the government, (b) title in himself by adverse possession, (c) title in himself from the defendant, or a better title than that of the defendant, tracing both his title and that of the defendant to a common source. Smith v Overstreet, 205 Miss 488, 38 So 2d 923.

deranged. Disordered in mind; insane. *Hiett v Shull*, 36 W Va 563, 565.

See **insane**.

de raptu haeredis. A writ whereby a guardian might secure the custody of his ward after she had been abducted.

de raptu virginum. An appeal of felony for the rape of a maiden.

de rationabili parte. A writ of right which lay for a person against his cotenant who had assumed exclusive possession.

de rationabili parte bonorum. Of a reasonable share of the goods,—a writ for the recovery of that part of a decedent's personal property which he had, in his lifetime, alienated against the rights of the wife and children. The shares of the wife and children were called their reasonable parts. See 2 Bl Comm 492.

de rationalibus divisis. A writ for the establishment of boundaries.

de rebus. Concerning things,—the title of the third part of the Digests or Pandects.

de rebus dubiis. In doubtful matters.

derecho. (Spanish.) A right; a lawful claim.

de recordo et processu mittendis. A writ in the nature of a writ of error to send the record and process of an action to a higher court.

de recto. A writ of right, which lay to recover a person's full rights to property.

de recto clause. See **briefe de recto claus.**

de recto de advocacione. A writ of right of advowson.

de recto de dote. A writ of right of dower.

de recto deficere. To fail of right; to fall short of justice.

de recto patens. A writ of right patent.

de redisseisina. A writ of redisseisin,—a writ which lay for one who had been disseised and who was disseised again by the same disseisor after he had recovered possession.

dereine. Same as **deraign**.

derelict. A vagrant; a person who is without substance, means, or an apparent purpose in life. A vessel abandoned without hope of recovery and without intention of returning to it, whether the abandonment arises from accident, necessity, or a purely voluntary measure. *Mengel Box Co. v Joest*, 127 Miss 461, 90 So 161. In the maritime sense, a vessel, cargo, or other property is derelict when it is abandoned without hope of recovery or without intention of returning thereto. 48 Am J1st Ship § 647.

dereliction. Failure in performance of duty; neglect of duty. Abandonment of property; abandoned property. A reliction, that is land made by the withdrawal of the waters by which it was previously covered. 56 Am J1st Wat § 476.

See **reliction; renunciation.**

de religiosis. Concerning religious persons.

de reparatione. Of repair,—an ancient writ now practically obsolete, which was brought by one tenant in common to recover of his cotenant a due proportion of the expense of making necessary repairs. *Ballou v Ballou*, 94 Va 350, 26 SE 840.

de reparatione facienda. Of making repairs,—an old writ seldom used whereby one joint tenant or tenant in common could compel the others to unite in the expenses of the necessary reparation of a house or mill owned by them, but which did not apply to fences enclosing wood or arable land.

de replegiare. A writ of replevin.

de rescussu. A writ of rescue, which lay to recover a person who had been rescued from an arrest or cattle which had been rescued from a distress.

de retorno habendo. A writ whereby a defendant who has prevailed in an action of replevin might have goods which were distrained and then replevied returned again into his custody, to be sold or disposed of as if no replevin had been made. See 3 Bl Comm 149.

dereyn. Same as **deraign.**

de rien culpable. Guilty of nothing,—not guilty.

[340]

de rigore juris. According to strict law.

de rigueur. (French.) By indispensable rule.

Derivativa postestas non potest esse major primitiva. Delegated authority cannot be greater than that which was originally given.

derivative. Something not original; something derived from another thing.

derivative action. An action brought by one or more stockholders of a corporation to enforce a corporate right or to prevent or remedy a wrong to the corporation in cases where the corporation, because it is controlled by the wrongdoers or for other reasons, fails and refuses to take appropriate action for its own protection. *Price v Gurney*, 324 US 100, 89 L Ed 776, 65 S Ct 513.

derivative conveyances. Conveyances of a secondary sort, which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by an original conveyance. See 2 Bl Comm 324. Derivative conveyances are releases, confirmations, surrenders, assignments, and defeasances. See 2 Bl Comm 310.

derivative fee. See **feudum improprium.**

derivative feud. Same as **feudum improprium.**

derivative jurisdiction. The jurisdiction of a certain court derived from another court, the term being best illustrated by jurisdiction on appeal, where the appellate court has jurisdiction of the cause on appeal only as the lower court had jurisdiction. 20 Am J2d Cts § 99.

derivative liability. See **vicarious liability.**

derivative suit. Same as **derivative action.**

derive. To receive as from a source or origin; to originate or acquire characteristics from a source which is traceable.

dernier. See **au dernier.**

dernier resort. The last resort.

derogation. Nullification, avoidance or abrogation, in whole or in part, as a statute nullifying common-law rights. 1 Am J2d Adm L § 43.

derogatory clause. A clause which a testator has secretly inserted in his will, the will containing a provision that any will thereafter made by him without the precise clause is to be void. The provision is anomalous to the same extent that an irrevocable will is anomalous. 57 Am J1st Wills § 15.

Derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur. A law is derogated when part of it is taken away; a law is abrogated when it is wholly abolished.

derrick barges. Vessels carrying derricks. 2 Am J2d Adm § 33.

de salva guardia. A writ of safeguard for the license and protection of strangers.

de salvo conductu. A writ of safe conduct.

de sa vie. For his own life; for his own lifetime.

De Scaccario. Of or concerning the exchequer,—the title of a statute enacted in the reign of Henry the Third.

descend. To come down; to pass by inheritance; to vest in a descendant or heir by operation of law on the death of the ancestor. 23 Am J2d Desc & D § 2.

descendant. A descendant is an individual proceeding from an ancestor in any degree; a child, a grandchild, a great grandchild, anyone, near or remote, in the line from the ancestor. *Turner v Monteiro*, 127 Va 537, 103 SE 572, 13 ALR 383, 387. Issue of any degree. *Soper v Brown*, 136 NY 244, 32 NE 768.

See **lineal descendant; posterity.**

descender. To descend.

descending from airplane. The phrase "descending from", in a life insurance policy excluding accidental death benefit for death resulting from "operating riding in or descending from" an airplane, includes things different from those included in the phrase

"riding in," such as a voluntary descent by parachute, or leaving the plane after it has landed. *Willingham v Life & Casualty Ins. Co.* (CA5 Ga) 216 F2d 226, 47 ALR2d 1017.

descending line of descent. See **direct descending line.**

Descensus tollit intrationem. A descent tolls or removes the right of entry.

descent. Hereditary succession. *Freeman v Allen*, 17 Ohio St 527. Technically, the transmission of real estate, or, some interest in real estate, on the death of its owner intestate; to be distinguished from the transmission of personal property, the title to which, on the death of the owner intestate, passes to the personal representative and, after the payment of all debts and claims against the estate, is governed by the rules of distribution. But often used loosely to refer to succession to either real or personal property. 23 Am J2d Desc & D § 1.

As the term is used in the Federal estate tax law, the time of the acquisition of the property of a decedent is the date of his death and not the date of distribution. See *Hopkins v Commissioner* (CA7) 69 F2d 11, 96 ALR 1358.

See **canons of descent; collateral descent; establishment of heirship; heirs; immediate descent; inherit; inheritance; intestate; issue; next of kin; per capita; per stirpes; presumptive heir; primogeniture; prospective heir; shifting descents doctrine; statute of distribution; stirps; stock of descent; succession; title by descent; vacant succession.**

descent cast. Literally, the devolving of title to real estate upon the heir upon the death of his ancestor intestate. A term used for the most part in designation of the acquisition of color of title by heirs where the ancestor, although possibly a trespasser originally, died in possession under claim of right. 3 Am J2d Adv P § 122.

describe. To define by properties or characteristics; to represent by words or other signs; to give an account; to relate; to give the boundaries of real estate.

description. A portrayal of a subject by reference to its features and incidents; a representation in words. As it applies to property, a delineation in a mortgage, deed, contract, or other instrument affecting the title to property, by means of which

[341]

the property involved in the transaction may be identified. *Ehret v Price* 122 Okla 277, 254 P 748.

See **description of real estate; sufficient description,**

description of real estate. A statement of the boundaries by monuments, courses, distances and quantity or by reference to maps, plats, or surveys. 12 Am J2d Bound §§ 3 et seq.

description of timber. See **now standing; when cut.**

descriptio personae. Description of the person; a word or phrase used for the purpose of identifying or pointing out a person. *Milam v Settle*, 127 W Va 271, 32 SE2d 269. Words descriptive of the person, such as "president," "manager," "agent," etc.

descriptive calls. Courses and distances referred to in describing a surveyed boundary of land, as distinguished from landmarks, monuments, and other physical objects which are known as locative calls. *Holmes v Trout* (US) 7 Pet 171, 8 L Ed 646.

de scutagio habendo. A writ to recover escuage.

de se bene gerendo. For or during his good behavior.

desecration of burial place. An unnecessary disturbance or wanton violation of a burial place. 14 Am J2d Cem § 39.

de secta ad molendinum. Of suit at the mill,—a writ to compel a person to grind his corn at the plaintiff's mill. See 3 Bl Comm 235.

desegregation. The elimination of the color of a person as a test or qualification of his or her right to be present at a school, a place of employment, a place of entertainment or refreshment, a place of commerce, or the depots and conveyances of a common carrier. See 15 Am J2d Civ R §§ 18 et seq.

desert. Verb: To abandon or forsake, although not beyond the possibility of returning. *People v Board of Police (NY)* 26 Barb 481, 501.

See **desertion.**

desert. Noun: Arid land.

desertion. The act of forsaking or abandoning a person, a cause or a post of duty. A continued abandonment of a ship by a seaman, during the term of service provided by his contract, with intention not to return, and without sufficient cause. 48 Am J1st Ship § 190. The criminal offense under the Uniform Code of Military Justice committed by any member of the armed forces where (1) without authority he goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; (2) quits his unit, organization, or place of duty to avoid hazardous duty or to shirk important service; or (3) without being permanently separated from one of the armed forces, enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States; also committed by any commissioned officer of the armed forces where, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently. 10 USC § 885.

The abandonment of a child in neglect of the duty of support. 39 Am J1st P & C § 104. The abandonment of wife or child penalized by the statutes of most of the states, including the Uniform Desertion and Nonsupport Act. 23 Am J2d Desert § 1. Quitting the society of wife and children and renouncing the duties owed them as a husband and father. *Kelley v State*, 218 Miss 459, 67 So 2d 459, 44 ALR2d 881.

As a ground for divorce, "desertion" is a voluntary separation of one of the parties to a marriage from the other or the voluntary refusal to renew a suspended cohabitation, without justification either in the consent or the wrongful conduct of the second party; a wilful absence by one spouse from the society of the other with the intention to live apart in spite of the wishes of the other and without any intention to return to cohabitation. 24 Am J2d Div & S § 96.

See **constructive desertion; wilful desertion.**

Desertion and Nonsupport Act. One of the uniform laws. 23 Am J2d Desert § 125.

desertion by seaman. See **desertion.**

desertion by soldier or other person in armed services. See **desertion.**

Desert Lands Act. A federal statute, commonly called the Carey Act, which sets forth a scheme for aiding the reclamation of arid lands in the public land states. 30 Am J1st Irrig § 101.

deserving. Worthy of assistance or of reward. *Nichols v Allen*, 130 Mass 211, 218.

de servitio regis. See **essoin de servitio regis.**

des gens. See **droit des gens.**

desideratum. That which is desired or called for.

design. A purpose, usually combined with a plan, of action; an intent or aim. *State v Grant*, 86 Iowa 216, 222. A sketch, plan, or pattern. To form a plan. To make a sketch or plan.

See **architectural design; formed design.**

designate. To mark out and make known; to point out; to name; to indicate. *State v Madison State Bank*, 77 Mont 498, 251 P 548. To locate definitely, as on a map. *Southern Pacific Railroad Co. v United States*, 168 US 1, 54, 42 L Ed 355, 378, 18 S Ct 18. To appoint a person to a position to be filled. *County of Santa Barbara v Janssens*, 177 Cal 114, 169 P 1025.

designation. A marking out; a pointing out; a selection; a naming, e. g. a naming of candidates by a county committee of a political party.

As used in an election law providing that the ballots shall be of plain, white paper, without ornaments, "designation," symbol, or mark, unless there is something in the statute to prevent it, the word must be construed as meaning only such a designation as is in the nature of a mark. *State v Saxon*, 30 Fla 668, 12 So 218.

designation of beneficiary. The naming by the insured under a life insurance policy of a third person as the one to receive the proceeds of the insurance upon the death of the insured. The clause in a life insurance policy wherein the person to receive the proceeds upon insured's death is named.

designation of homestead. The selection by formal declaration of the land which one desires to stand as his homestead, exempt from a forced sale, required under some statutes as a condition of a homestead right. 26 Am J1st Home § 88.

[342]

designatio personae. A description of the person.

See **descriptio personae.**

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. The designation of one is the exclusion of the other, and that which is expressed chokes that which is silent.

designed. Planned. *Jacobs v Danziger*, 328 Mo 458, 41 SW2d 389, 77 ALR 1237, cert den 284 US 675, 76 L Ed 571, 52 S Ct 130.

See **design.**

design patent. A patent of a design giving a new and pleasing appearance to an article of manufacture, whereby its sale is enhanced. *Smith v Whitman Saddle Co.* 148 US 674, 37 L Ed 606, 13 S Ct 768; *Viehmann v D. F. H. Novelty Furniture Co.* (DC NY) 27 F Supp 566.

design to kill. An intent to kill held for an appreciable, even if very brief, period of time. 26 Am J1st Homi § 42.

De similibus ad similia eadem ratione procedendum est. Proceeding in similar matters is by the same rule.

De similibus idem est iudicium. The same judgment is rendered in similar cases.

desire. To wish; to express a wish. A precatory term, but in the proper context, a word of disposition or gift in a will. 57 Am J1st Wills § 1328. A mandatory direction as it appears in a will providing for the payment of inheritance taxes from the residue of the estate. 28 Am J1st Inher T § 488.

desire to improve the premises. A clause in a cancellation provision of a lease, the connotation of which is a desire accompanied by a definite intention of execution and attainment. Woods v Posto Telegraph-Cable Co. 205 Ala 236, 87 So 681, 27 ALR 834.

desmaintenant. From the present time; henceforth.

desmemoriados. (Spanish). A person who is bereft of memory.

de son done. By his own gift.

de son fee. See **hors de son fee.**

de son gree. Of his own accord.

de son tort. By his own tort or wrong.

See **executor de son tort; guardian de son tort; trustee de son tort.**

de son tort demesne sans tiel cause. By his own wrong without such cause.

desormes. From the present time, henceforth.

desoubs. Same as **dessous.**

despatch. Same as **dispatch.**

desperate chose in action. See **desperate debt.**

desperate debt. An obligation as to which there is no hope of collection. Schultz v Pulver (NY) 11 Wend 363, 365.

despitus. A despised person.

despoil. To deprive a person of property of which he is in possession by violence or by some clandestine means. Sunol v Hepburn, 1 Cal 255, 268.

desponsation. A betrothal.

desponsorio. (Spanish.) Mutual promises to marry.

despot. An absolute ruler; a tyrant.

despotism. The rule of a tyrant.

desrenable. Unreasonable.

dessication. See **de debitore in partes secando.**

dessous. Under; underneath; below.

dessus. Above.

de statuto mercatori. A writ of statute merchant.

de statuto stapulae. A writ of statute staple.

destination. The place to which something is sent. The place at which the trip of a passenger, or a shipment of goods, by carrier is to end, which, in the case of a through shipment over two or more lines, is the final or last termination. *Home Furniture Co. v United States*, 271 US 456, 460, 70 L Ed 1033, 1035, 46 S Ct 545.

The term is not limited to the premises of the carrier where the shipment is unloaded, but means the town or city to which the shipment is sent. Anno: 1 ALR 912.

A succession of beneficiaries provided for in a will.

See **port of destination.**

destine. To set, ordain, or appoint to a use, purpose, estate or place; to appoint unalterably. *United States v Philadelphia & New Orleans (US)* 11 How 609, 659, 13 L Ed 834, 855.

destitute. Poor, indigent. 41 Am J1st Poor L § 4. Without means of support either in property or in a person legally bound to furnish support. *Supreme Council Catholic Benev. Legion v Grove*, 176 Ind 356, 96 NE 159.

See **destitute circumstances.**

destitute child. See **destitute circumstances; destitute person.**

destitute circumstances. A relative term. A wife or child is in "destitute circumstances" when in need of the necessities of life, meaning not only primitive physical needs, things absolutely indispensable to human existence and decency, but also things which are in fact necessary to him or her as an individual. *State v Waller*, 90 Kan 829, 136 P 215.

destitute person. A poor or indigent person. 41 Am J1st Poor L § 4.

See **destitute circumstances.**

destitute wife. See **destitute circumstances; destitute person.**

destroy. To tear down; to cause to perish; to break into pieces; to burn up; to make useless for service, beyond hope of recovery of value, as by wrecking a ship through casting her upon rocks or shoals. *United States v Johns (US)* 4 Dall 412, 417, 1 L Ed 888, 890. But a thing may lose its value without being destroyed, as where a hotel or inn in the country is taken out of the main stream of traffic by a relocation of highway. *Jones v Erie & Wyoming Valley Railroad Co.* 151 Pa 30, 25 A 134.

destroyed by fire. Total destruction or such damage as renders the property unfit or incapable of being

[343]

used without rebuilding, not simply repairing. 32 Am J1st L & T § 506.

See **total destruction; total loss; wholly destroyed.**

destruction. A wrecking, tearing down, breaking up, or burning up. Sometimes synonymous with "loss." *Electric Reduction Co. v Lewellyn* (CA3 Pa) 11 F 493. Sometimes accomplished indirectly, without touching the property physically, as where the property is rendered useless. *Jones v Erie & Wyoming Valley Railroad Co.* 151 Pa 30, 46. But a thing can lose its value without being destroyed. *Jones v Erie & Wyoming Railroad Co.* 151 Pa 30.

See **destroyed by fire; total destruction; wholly destroyed.**

destruction of subject matter. The destruction of a thing, the continued existence of which is essential to the performance of a contract. 17 Am J2d Contr § 411.

De sturgione observetur, quod rex illum habebit integrum; de balena veto sufficit, si rex habeat caput, et regina caudam. As to the sturgeon, it is to be noted, that the king shall have the whole of it, but as to the whale, it sufficeth if the king have the head, and the queen the tail. See 1 Bl Comm 222.

desuetude. Disuse.

de suit. See **droit de suit.**

de superoneratione pasturae. A writ of surcharge of the common of pasture. See 3 Bl Comm 238.

de supersedendo. A writ of supersedeas, which, directed to an officer, commands him to desist from the execution of another writ which he is about to execute, or which may come into his hands.

desus. Same as **dessus.**

detached dwelling. A term familiar in restrictive covenants limiting construction to "detached dwellings," the courts disagreeing as to whether a covenant in such terms precludes the construction of apartment houses. Anno: 14 ALR2d 1403, § 8.

detachiare. To seize.

detail. A small part or item; an account of a happening which deals minutely with it. A term of the military for a small detachment put to special duty or special tasks, but subject to recall to the ordinary line of duty. *State ex rel. Dawson*, 39 Ala 367, 379.

detailmen. Employees of an industry whose duties are to travel and discuss and explain the products of the industry, not to wholesalers, but to persons interested as prospective purchasers and users. *Eli Lilly & Co. v Sav On Drugs Inc.* 366 US 276, 6 L Ed 2d 288, 81 S Ct 1316.

detain. To hold; to keep in custody; to keep.

To detain goods as amounting to a conversion of them means wrongfully to hold them and keep them in one's custody. *Wails v Farrington*, 27 Okla 754, 116 P 428.

detainer. The act of withholding land from the rightful owner; the restraint of a person without his consent.

See **forcible detainer; unlawful detainer.**

detainment of kings. See **restraints of kings.**

detainment of princes. See **restraints of princes.**

detainment of vessel. Holding in possession or custody, something more than a blockade, since the master is in control of a blockaded vessel. *Olivera v Union Ins. Co.* (US) 3 Wheat 183, 189, 4 L Ed 365, 366.

de tarris. See **judgment de tarris.**

detection. Bringing to light; finding out, particularly the person who committed a crime.

detective. One engaged in the detection of crime as a member of a police force or privately.

de tempore cujus contrarium memoria hominum non existat. From the time when the memory of man runneth not to the contrary.

de tempore in tempos, et ad omnia tempora. From time to time, and at all times.

de temps dont memorie ne court. From the time when memory runneth not to the contrary.

detention. Holding one arrested on a charge of crime. *Wong Wing v United States*, 163 US 228, 235, 41 L Ed 140, 142, 16 S Ct 977.

See **commitment; detainment of vessel; restraints of kings; restraints of princes.**

deter. To stop one from acting by frightening him; to discourage the performance of an act. *Printup v Alexander & Wright*, 69 Ga 553, 556.

detergent. A cleansing substance, other than soap, used in washing clothes, dishes, etc., and sometimes added to lubricating oil.

determinable. That which may be determined, found out, definitely decided upon, or settled; as the date of an instrument which, to be negotiable, must, under the Negotiable Instruments Law, be payable at a "determinable" future time. *McCornick & Co. v Gem State Oil & Products Co.* 38 Idaho 470, 222 P 286, 34 ALR 867, 872.

determinable fee. An estate limited to a person and his heirs, with a qualification annexed by which it is provided that the estate must determine whenever that qualification is at an end; otherwise known as a base fee, qualified fee, or a defeasible fee. *Staack v Detterding*, 182 Iowa 582, 161 NW 44; *King County v Henson Invest. Co.* 34 Wash 2d 112, 208 P2d 113.

Upon the grant of a determinable fee there remains in the grantor a possibility of reverter. *Donehue v Nilges* (Me) 266 SW2d 553, 45 ALR2d 1150.

determinable future time. A fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening is uncertain. Uniform Negotiable Instruments Law § 4(3); 11 Am J2d B & N § 171.

determinate. Ascertained; made certain; definite; having fixed limits.

determination. Firm intention; a conclusion; a cessation; an ending; a termination. A technical term applied to an allowance or disallowance in correcting an error in taxation. See 34 Am J2d Fed Tax ¶ 9172.

determination letter. A written statement issued by the district director of internal revenue in response to a taxpayer's inquiry as to the tax treatment of

a particular transaction, primarily with respect to a completed transaction.

determination of adverse claims. A statutory remedy for the determination of adverse claims to real property which is an enlargement upon the equitable remedies of quieting title and removing a cloud on title; designed to afford an easy and expeditious mode of quieting title to real estate. 44 Am J1st Quiet T § 5.

determination of will. Firm intention. The manifestation of the termination of that intention or state of mind which keeps alive an estate at will, by some appropriate act or omission on the part of the lessor or lessee. See 2 Bl Comm 146.

determinative powers. A term more useful than exact, the aim of which is to describe powers and functions involving the decision or determination by an administrative agency of the rights, duties, and obligations of specific individuals and persons, as contrasted with powers of administrative agencies which, while they may involve decisions or determinations in the broadest sense, involve persons generally rather than specially and usually operate only prospectively. 1 Am J2d Admin L § 138.

determine. To terminate; to cease; to end. To put an end to controversy by deciding the issue or issues, by making a settlement, or by adjustment. *Field v Auditor*, 83 Va 882, 887. Same as "hear and determine" when used by statute with reference to court action, but meaning merely "ascertain," where used in matters not pertaining to judicial process. *Ex parte Anderson*, 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051.

See **hear and determine**.

de terra sancta. Of the holy land.

See **essoin de terra sancta**.

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

de testamentis. Of testaments or wills,—the title of the fifth part of the Digests or Pandects.

de thelonio. A writ for the recovery of tolls.

detinet. He detains.

See **debet et detinet**.

detinue. A common-law remedy for the recovery in specie of chattels wrongfully withheld from the plaintiff.

See **non detinet; writ of detinue**.

detinuit. A plaintiff is said to be "in the detinuit" when he is in possession of the goods under a writ of replevin.

detractare. To draw; to drag along.

detractio. Disparagement. A taking away.

See **duties of detraction**.

de transgressione. A writ of trespass.

detriment. As consideration for a contract, some forbearance, loss, or responsibility, given, suffered, or undertaken by the party; any prejudice suffered or agreed to be suffered by a contracting party other than such as he is at the time of contracting lawfully bound to suffer. 17 Am J2d Contr § 96. Loss or harm suffered in person or in property. *Moberg v Scott*, 38 SD 422, 161 NW 998; *Brown v Brown*, 42 Okla 124, 140 P 1022.

detunicari. To discover; to uncover.

Detur digniori. Let it be given to the more deserving one.

de ultra mare. Of beyond the sea,—a kind of essoin.

See **essoin de ultra mare.**

de una parte. Of one side; unilateral; binding upon but one of the parties.

Deus solus haeredem facere potest, non homo. God alone can make an heir, man cannot.

deuterogamy. The marriage of a person after the death of that person's former spouse. Some authorities confine the definition to the remarriage of a widower.

de uxore abducto. See **trespass de uxore abducto.**

de uxore rapta et abducta. Of the rape and abduction of a wife,—a writ which lay for a husband to recover damages for the abduction of his wife, whether the act was by force, fraud or persuasion. See 3 Bl Comm 139.

devadiatus. A person charged with crime who was at large without bail or sureties.

devant. Before.

devant le roy. Before the king.

devastation. A state of destruction. Waste. See 2 Bl Comm 508.

devastaverunt. They have committed waste.

devastavit. Mismanagement of the estate and effects of a decedent, or a misapplication or waste of the assets, in violation of the duty imposed upon an executor or administrator. 31 Am J2d Ex & Ad § 265.

de vasto. A writ of waste.

developed water. Such subterranean or underground water as is discovered and brought to the surface by the exploitation of man, and which otherwise would run to waste. *Rock Creek Ditch & Flume Co. v Miller*, 93 Mont 248, 17 P2d 1074, 89 ALR 200.

developing land. See **land development.**

development of mine. See **mine development.**

devenerunt. A writ directing the escheator to ascertain what lands which were held by a tenant in capite should, upon his death, escheat to the king.

Devenio vester homo. I become your man,—formal words which were used by the vassal in the ceremony of homagium, or manhood, whereby the tenant or vassal, after having made oath of fealty, became bound to the lord, under the feudal system. See 2 Bl Comm 54.

devenit. He comes; he comes into.

de ventre inspiciendo. A writ to ascertain whether a woman convicted of a capital crime was quick with child, which was allowed by the common law, in order to guard against the taking of the life of an unborn child for the crime of the mother. The writ was also used in civil cases to protect the rightful succession to the property of a decedent against fraudulent claims of bastards, when a widow was suspected of feigning pregnancy in order to produce a supposititious heir to the estate, in which case the heir or devisee might have this writ to examine whether the woman was pregnant or not, and if she was, to keep her under

[345]

proper restraint until she was delivered. *Union Pacific Rv. Co. v Botsford*, 141 US 250, 253, 35 I, Ed 734, 738, 11 S Ct 1000.

de verbo in verbum. From word to word,—word for word.

de verborum significatione. Of or concerning the meaning of words,—the title of that part of the Digests or Pandects which defined words and phrases of the Roman law.

devest. To deprive.

deviation. A departure by the owner of an easement of way from the path or road over the servient tenement which he is entitled to use. 25 Am J2d Ease § 70.

See **deviation from route.**

deviation by carrier. See **deviation from route.**

deviation by ship. See **deviation from route.**

deviation doctrine. A doctrine involving the liability of the master for the negligence of his servant in driving the master's car, that if the use to which the automobile is being put is only a slight deviation from the use for which permission was originally granted, the permission is not vitiated. *Johnson v Maryland Casualty Co.* (CA 7 Wis) 125 F2d 337.

deviation from route. A change from the usual or customary route, a term usually employed in the law in reference to a carrier or other bailee entrusted with property for transportation. 4 Am J2d Ani § 7. A technical term in the law of carriers, of maritime origin but extended to include land transportation, meaning a change of route from the customary route, such being actionable only where it was voluntary and without necessity or reasonable cause. 13 Am J2d Car § 324. A voluntary variation constituting an abandonment of the voyage insured by marine policy. *Wilkins v Tobacco Ins. Co.* 30 Ohio St 317.

Deviation by a ship is a voluntary departure, without necessity or reasonable cause, from the regular and usual or agreed course of a voyage. It may consist also in other departures from the agreed or customary route or method of transportation, such as taking another vessel in tow, shipping by a vessel other than the one specified in the contract of affreightment, shipping part of the way by rail when all water carriage was stipulated, or carrying the goods beyond the delivery point. Whether there has been a deviation or not, upon given facts, is a question of law for the court to determine. 48 Am J1st Ship 393. The term "deviation" in a marine insurance policy means a voluntary departure without necessity or justifiable cause, from the regular and usual course of the voyage. 29A Am J Rev ed Ins § 1000.

See **involuntary deviation**.

device. Something ingeniously conceived and skil-fully made, especially something whereby to work a trick or perpetrate a fraud. *Armour Parking Co. v United States*, 209 US 56, 71, 52 L Ed 681, 690, 28 S Ct 428. A distinguishing mark, as upon an election ballot: an emblem, a symbol, such as "O.K." *State ex rel. Baxter v Ellis*, 111 NC 124, 15 SE 938. A placard, a banner, or a sign, displayed and maintained by strikers near the employer's place of business for the purpose of deferring workmen from entering the place or remaining at work. *Arthur v Oakes (CA7 Wis)* 63 F 310. As the term is used in connection with patents it means a thing devised or formed by design,—a contrivance, an invention. *Bliss Co. v United States*, 248 US 37, 43, 63 L Ed 112, 116, 39 S Ct 42.

See **gambling device; safety device**.

de vicineto. From the particular neighborhood, as distinguished from the county at large. See 3 Bl Comm 360.

See also **de corpore comitatus**.

devier. To swerve; to deviate.

devil. A term of the printing trade of an older day for boy in the shop who ran errands and did odd jobs.

"It sometimes happens that a junior barrister will be given work which a brother barrister, through press of business, is unable to do. Where a barrister obliges a friend in this way he is said to "devil" for him. Formerly the "devil" got no fee, but at the present day it is usual for him to receive [in the Chancery Division, but not seemingly in the King's Bench Division] half the fee marked on his friend's brief." *Marston Garcia, A New Guide to the Bar (6th Ed. 1928)* p. 124.

de vi laica amovenda. For removing the force of the laity,—a writ which lay to prevent laymen from giving aid by force to a clergyman in his strife with another one for possession of a church.

devilish character. An eccentric, roguish, quarrel some, or even a mean person, but not an insane person. 29 Am J Rev ed Ins Per § 35.

de viridi et venatione. Of vert and venison. The court of attachments, a forest court, was held before the verderers of the forest once in every forty days to inquire into all offenses against vert (the greensward where the deer fed) and venison (the killing of deer). See Bl Comm 71.

devisa. A boundary.

devisavit vel non. The issue which arises upon the contest of a will. 57 Am J1st Wills § 774. An issue of fact as to whether a will in question was made by the testator as his own responsible act. *Asay v Hooper*, 5 Pa 21. 25.

devise. A testamentary gift of real estate. 57 Am J1st Wills § 1399. Sometimes used loosely to include a testamentary gift of either personalty or real estate, but by the weight of authority, when used in a statute, the word is to be given its technical meaning and is held to apply only to real property, unless it clearly appears that the intention of the legislature was otherwise. 57 Am J1st Wills § 1400. The meaning restricted to real estate, however, will not prevail against language in the will which indicates the testator's intention to include personal property despite his use of the term "devise." 57 Am J1st Wills § 1400. Although in their technical sense the words "devise" and "bequest" are generally applied to the testamentary disposition of real and personal property respectively, a nonlapse statute providing that the lineal descendants of a "devisee" shall take the estates given by the will "in the same manner as the devisee would have done had he survived the testor" will be interpreted as including bequests of personalty as well as devises of realty where the legislature has in other statutes used the terms in a non-technical sense, where the evident legislative intent is to carry

out the will of the testator, and where an intent to dispose of realty and personalty on the same basis appears in the will. *Hoellinger v Molzhon*, 77 ND 108, 41 NW2d 217, 19 ALR2d 1147.

[346]

devise and bequeath. Words which in their ordinary legal meaning, also in common usage, refer to real as well as personal property. *Caracci v Lillard*, 7 Ill 2d 382, 130 NE2d 514, 53 ALR2d 1053.

devise and grant. Apt words of conveyance in creating a covenant to stand seised. 28 Am J2d Est § 347.

devisee. The beneficiary named in a devise which in the best legal sense is a testamentary gift of real estate.

See **devise; residuary devisee.**

devisor. A testator who makes a devise by his will.

devoir. Duties; customs.

devolution. The transfer of property from one person to another by operation of law.

See **clause of devolution.**

devolve. To roll or tumble down or descend; to be transmitted by a course of events, or by operation of law; to transfer from one person to another; to pass by transmission to another; to pass by operation of law upon the death of the owner. *Fitzpatrick v McAlister*, 121 Okla 83, 248 P 569.

An estate "devolves" upon another when by operation of law, and without any act of the previous owner, it passes from one person to another; but it does not devolve from one person to another as the result of some positive act or agreement between them. *Francisco v Aguirre*, 94 Cal 180, 185, 29 P 495.

devyer. Same as **devier.**

de warrantia chartae. A writ of warranty of charter.

de warrantia diei. A writ of warranty of day, under which a man might save himself from suffering a default by reason of his absence in the service of the king.

d'execution. See **droit d'execution.**

d. h. An abbreviation of the word "deadhead."

See **deadhead; deadhead message.**

diabetes. A disease having various types but in its most common form characterized by excessive sugar in the blood and urine. *Duggan v McBreen*, 78 Iowa 591, 593. Usually responding favorably to treatment with insulin.

diagnosis. Etymologically and in its general interpretation, the word signifies a discrimination, a passing of judgment as to physical conditions. *Baker v State*, 91 Tex Crim 521, 240 SW 924, 22 ALR 1163, 1166. It is an analysis by a physician of the trouble of his patient. 41 Am J1st Phys & S § 92. The professional opinion of a physician based on his examination.

diagram. An illustrative outline of a tract of land, or something else capable of linear projection, which is not necessarily intended to be perfectly correct and accurate. At best, it is but an approximation. It is a common and usual method of pointing out localities and lines. *Shook v Pate*, 50 Ala 91, 92.

diarium. Sufficient food for one day.

diatim. From day to day; daily.

dicasts. Athenian judges who were chosen by lot and who passed upon questions of both law and fact.

dice. Small cubes of bone or plastic, convenient for tossing, marked in the sides by spots in varying numbers running from one to six, used in games of chance by gamblers. Loaded dice.

See cogging.

Dicebatur fregisse juramentum regis juratum. He was said to have broken the sworn oath of a king See 1 Bl Comm 268.

dicere et non dare legem. To expound, but not to make the law. The Curtis, The Camden & The Welcome, 37 F 705.

dicing. The gambling game of throwing dice.

di colonna. A contract under which the owner of a ship and everyone connected with the ship are entitled to share in the profits of the voyage.

dict. An abbreviated form of **dictum**. An abbreviation of "dictionary."

dicta. Plural of dictum. Often referred to as obiter dicta or obiter, being expressions in an opinion of the court which are not necessary to support the decision. *Lawson v United States*, 85 App DC 167, 176 F2d 49, cert den 339 US 934, 94 L Ed 1352, 70 S Ct 663, reh den 339 US 972, 94 L Ed 1379, 70 S Ct 994. Language unnecessary to a decision; ruling on an issue not raised, or the opinion of a judge which does not embody the resolution or determination of the court, and made without argument or full consideration of the point. *Lawson v United States*, 85 App DC 167, 176 F2d 49; 20 Am J2d Cts § 74.

Stare decisis does not attach to such parts of the opinion of a court as are mere dicta. Of course, if nothing can be found in point except dicta, counsel does not hesitate to cite the case which contains it. There is, moreover, a distinction between mere obiter and judicial dicta. The latter term applies to expressions of opinion on a point deliberately passed upon by the court. 20 Am J2d Cts § 74. Judicial dicta, as such, is sometimes given effect as holdings. 20 Am J2d Cts § 190.

While mere obiter is not law of the case, judicial dicta are not excluding from the applicability of the doctrine of the law of the case. 5 Am J2d A & E § 753.

dictate. To pronounce, word by word, what is designed to be written by another. *Hamilton v Hamilton (La)* 6 Mart NS 143, 146. To give orders with authority.

dictator. An absolute ruler, answerable to no other power or authority.

dictionary. Dictionaries do not give to words their meaning; they only chronicle that which has been done, and the use must precede the chronicling. *State v Olson*, 26 ND 304, 144 NW 661.

ditto majoris partis. See **ex ditto majoris partis**.

dictores. Arbitrators.

dictum. An expression in an opinion which is not necessary to support the decision reached by the court. *Parker v Stonehouse Drainage Dist*: 152 Kan 188, 102 P 1017. A statement in an opinion with respect to a matter which is not an issue necessary for

decision. *Tillinghast v Maggs*, 82 RI 478, 111 A2d 713, 52 ALR2d 1004. A writ employed to obtain the correction of a record on appeal. 4 Am J2d A & E § 478.

[347]

The plural of dictum is **dicta**. For effect of dictum as precedent or law of the case. See **dicta**.

dictum of Kenilworth. A compromise of their differences between Henry the Third and Parliament in 1266.

dictus. See **alias dictus**.

did then and there. Familiar words in alleging time and place of the commission of an offense. 26 Am J1st Homi §§ 267 et seq.; 27 Am J1st Indict § 70.

die. To lose one's life. This does not necessarily import that death must result from an accident or that it must occur in some unforeseen manner. *Hershey v Agnew*, 83 Colo 89, 262 P 526.

Diebus Dominicis mercari, judicari vel jurari non debet. On the Sabbath there ought not to be any trading, any giving judgment, nor any holding of court. A maxim of the civil law. *Richardson v Goddard (US)* 23 How 28, 16 L Ed 412, 417.

die by his own hand. Die by suicide. Unless the words are qualified by some other expression, they import a criminal act of self destruction. Hence they do not include a case of suicide while insane. *Breasted v Farmers' Loan & Trust Co.* 8 NY 299.

die by suicide. Die by his own hand. A self-killing by an insane person, understanding the physical nature and consequences of his act, but not its moral aspect, is not a death by suicide within the meaning of the phrase. *Manhattan Life Ins. Co. v Broughton*, 109 US 121, 131, 27 L Ed 878, 882, 3 S Ct 99.

died by his own hand. See **die by his own hand**; **death by his own hand**.

diei dictio. A notice given by a Roman magistrate of his intention to impeach a citizen upon a certain day.

Diem clausit extremum. He closed his last day; that is, he died,—a writ by which the heir of a deceased tenant in capite compelled the escheator to ascertain what land should escheat to the king.

dies. A day.

dies ad quem. The day to which.

dies amoris. A day of grace, favor, or indulgence.

dies a quo. The day from which; the day from which or upon which a period of time begins to run. 52 Am J1st Time § 17.

dies communes in banco. Common days in banc,—fixed days for appearance in court.

dies consilii. A day set for an argument or hearing.

dies datus. A given day; a day given or set.

Dies Dominicus non est juridicus. The Lord's day is not a juridical day. That is, it is not a day upon which legal proceedings may be conducted. *Moss v State*, 131 Tenn 94, 173 SW 859.

Diesel engine. An internal combustion engine without sparkplugs, ignition being accomplished by heat.

Diesel-powered single-car unit. Not a train with the meaning of a full-crew statute. *Western Pac. R. R. Co. v State*, 69 Nev 66, 241 P2d 846, 45 ALR2d 429.

dies excrescens. The extra day—the twenty-ninth day of February—which is added in leap-years.

dies fasti. (Civil law.) Those days on which the business of the courts could be transacted. In the Roman calendar there were in the whole year but twenty-eight judicial or triverbial days allowed to the praetor for deciding causes. 3 BI Comm 424.

dies feriati. Days of rest or idleness; holidays.

dies gratiae. A day of grace, favor, or indulgence.

Dies inceptus pro completo habetur. A day begun is regarded as completed. The law does not recognize fractions of a day.

Dies incertus pro conditione habetur. An uncertain day is regarded as a condition.

dies intercesi. Days upon which the court was in session during only a part of each day.

Dies interpellat pro homine. The due date makes the demand for the man (the creditor).

dies juridici. Plural of **dies juridicus**.

dies juridicus. A juridical day, —a day upon which court can lawfully be held; a court day. 50 Am J1st Sun & H § 73.

dies legitimus. A lawful day; a term day of court; a law day; an appearance day.

dies lunaris. A lunar day.

dies nefasti. (Civil law.) Those days of the year in which the business of the courts could not be lawfully transacted. See 3 BI Comm 276.

dies non. An abbreviation of **dies non juridicus**. *Havens v Stiles*, 8 Idaho 250, 67 P 919.

dies non juridicus. A day not for litigation. *Vidal v Backs*, 218 Cal 99, 21 P2d 952, 86 ALR 1134.
See **nonjuridical day**.

dies solaris. A solar day.

dies solis. The day of the sun,—Sunday.

dies utiles. Available days,—days upon which a proposed or agreed act could be lawfully done.

diet. A legislative assembly; a meeting of delegates. One's daily food; a selection of food made for reasons of health or for reducing weight.

dieta. A day's work; a day's expenses; a reasonable day's journey. See 3 Bl Comm 218.

diet of compearance. A day set for a party's appearance in court.

Dieu et mon droit. God and my right,—the battle slogan of Richard the First which subsequently became the motto of the royal arms of England.

Dieu son acte. God's own act,—an act of God; vis major.

die without issue. A phrase common in testamentary gifts, appearing in the form of "to A, but if he dies without issue, then to B," and presenting the ques-

[348]

tion of construction as between a definite and an indefinite failure of issue, the interpretation whereby the testator is taken to have meant the death of A without surviving issue being termed the "definite failure" construction and the interpretation whereby the testator is taken to have meant the death without surviving issue of A's last descendant, whenever that might be, being called the "indefinite failure" construction.

While at common law, the "indefinite failure" construction was preferred, the "definite failure" construction was made mandatory in England by statute in 1837, in the absence of a clear testatorial intention to the contrary. In the United States, in the absence of statute, there are two lines of authority, one upholding and one rejecting the common-law rule. In many states, statutes have been enacted requiring the adoption of the "definite failure" construction in the absence of any clear expression of a contrary intention. 57 Am J1st Wills § 1238.

The words "die without issue," and other expressions of the same import, mean an indefinite failure of issue. At common law, in the absence of words making a different intent apparent, the established interpretation of such expressions in a will is that they import a general indefinite failure of issue, and not a failure at the death of the first taker. *Parkhurst v Harrower*, 142 Pa 432, 21 A 826.

diffacere. To mutilate; to destroy.

differences. See **compounding for differences; controversy; issue.**

differentiated tax. See **graduated tax.**

differentiation of taxes. See **graduated tax.**

Difficile est ut unus homo vicem duorum sustineat. It is distressing that one man should suffer for the vice of two.

difforciare. To deny or keep from a person.

dig. To excavate. To mine. An abbreviation of **digests.**

digama. Same as **deuterogamy.**

digamy. Same as **deuterogamy.**

digests. The Pandects or body of Roman laws compiled under the Emperor Justinian. Law books arranged in an alphabetical order of titles and presenting in analytical distribution summaries and syllabi of cases.

digging. A mine. A slang term for one's living quarters.

dignitary. A person of importance. In an older day, the term was applied to any ecclesiastical officer of a rank or station higher than that of a priest or canon.

dignities. A species of incorporeal hereditaments bearing a near relation to offices. They were originally annexed to the possession of certain estates in land. See 2 Bl Comm 37.

dike. An embankment employed to prevent the inundation of land; a structure of earth or other material usually placed upon the bank of a stream or near the shore of a lake, bay, etc., the ends of which extend across low land to higher ground, forming a continuous bulwark or obstruction to water, and designed to keep it without the inclosure thus formed. *Morton v Oregon Short Line Railway Co.* 48 Or 444, 87 P 151.

See **flee to the wall.**

dilacion. A postponement or extension of time granted to a litigant.

dilapidations. Ruins. A kind of ecclesiastical waste, either voluntary, by pulling down; or permissive, by suffering the chancel, parsonage-house and other buildings thereunto belonging to decay. For such wrong an action lay, either in the spiritual court by the canon law, or in the courts of common law. See 3 Bl Comm 91.

dilation. A delay; a continuance; a postponement.

Dilationes in lege sunt odiosae. Delays are obnoxious to the law.

dilatoria. See **exceptio dilatoria.**

dilatory defenses. Defenses which delay the action without destroying the cause or right of action; defenses pleaded in abatement. 41 Am J1st Pl § 115.

dilatory motion. A motion made for delay. 37 Am J1st Motions § 3.

dilatory plea. Any plea belonging to a class which tends to delay a trial of the case on the merits; such as a plea in abatement or a plea in bar. *Parks v McClellan*, 44 NJL 552, 557.

See **dilatory defenses.**

diligence. Active attention to some matter in hand. *Heintz v Cooper*, 104 Cal 670, 38 P 512. The opposite of laches. 27 Am J2d Eq § 152. A relative term incapable of precise definition, its meaning being dependent upon the particular circumstances of the case.

Under Scotch law, the word is applied to an execution proceeding for the collection of a debt.

See **diligent inquiry; due diligence; extraordinary diligence; ordinary diligence; prudence; reasonable diligence; slight diligence.**

diligence of bailee. See **high diligence.**

diligentia. In the civil law, there are three degrees of diligence; *diligentia* or ordinary diligence; *exactissima diligentia* or extraordinary diligence; and *levissima diligentia* or slight diligence. Likewise, there are three degrees of fault or neglect; *lata culpa* or gross fault or neglect; *levis culpa* or ordinary fault or neglect; and *levissima culpa* or slight fault or neglect. *Brand v Troy & Schenectady Railroad Co.* (NY) 8 Barb 368, 378.

Diligentia quam suis rebus adhibere solet. The diligence which it is customary to exercise in the management of one's own affairs.

diligent inquiry. Such inquiry as a diligent man, intent upon ascertaining a fact, would usually and ordinarily make,—inquiry, with diligence, and in good faith, to ascertain the truth. *Van Matre v Sankey*, 148 Ill 536, 36 NE 628.

diligiatus. A person who was outlawed; an outlaw.

dillonques. Thenceforth; afterward.

diluvion. The gradual washing away and consequent loss of soil along the banks of a river. *Hagen v Campbell* (Ala) 8 Port 9. Opposite of alluvion.

dimes. Tenths; tithes. United States coins of the value of ten cents.

[349]

dimidietas. One half of anything.

dimidium. An undivided one-half interest in anything.

diminished liability clause. A provision in an accident insurance policy for a decrease of benefits upon the insured engaging in an occupation more hazardous than the one under which he was insured. 29 Am J Rev ed Ins § 768.

diminutio. Diminution.

diminution. A taking away or lessening.

diminution of damages. See **mitigation of damages.**

diminution of salary. The lowering of a salary. Not comprehending the placing of a burden upon a salary in the form of an income tax.

diminution of the record. A term applied to a record on appeal which is in some respect inaccurate or incomplete. *State v Reid*, 18 NC 382.

dimisi. I have demised.

Dimisi, concessi, et ad firman tradidi. I have demised, granted and leased to farm.

dimisit. He has demised.

dimittere. To dismiss; to release.

dimming headlights. A requirement in driving a motor vehicle imposed in many jurisdictions as a safety measure, preventing a glare interfering with approaching drivers. 7 Am J2d Auto § 226.

dinarchy. A government with two rulers.

Dingley Act. The protective tariff act passed by Congress in 1884.

diocesan courts. Ecclesiastical courts held by the bishop or his chancellor in each diocese.

diocese. The see or jurisdiction of a bishop. See 1 Bl Comm 111.

diode. A vacuum tube for radio or television. *Lewis v Avco Mfg. Corp.* (CA7 111) 228 F2d 919, 926.

dip. In mining,—the downward course of the vein. "Dip" and "depth" are of the same origin—"dip" is the direction or inclination toward the "depth" —and it is throughout their depth that veins may be followed, and that is surely their downward course. *Duggan v Davey*, 4 Dak 110, 141, 26 NW 887.

diploma. An instrument conferring some privilege, honor, or authority; now almost wholly restricted to certificates of degrees conferred by schools, universities and colleges. *Halliday v Butt*, 40 Ala 178, 183.

diplomatic officers. Ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, charges d'affaires, agents and secretaries of legation. *Ex parte Baiz*, 135 US 403, 419, 34 L Ed 222, 227, 10 S Ct 854. Officers however denominated who possess the functions, rights, and privileges as agents of their respective governments for the transaction of diplomatic business abroad. 4 Am J2d Ambss § 1.

diplomatics. The science of deciphering ancient documents or that of passing upon their genuineness.

dippers. Certain officers of a court baron who received and depended upon gratuities for their compensation. *Weller v Baker* (Eng) 2 Wilson 422.

dipping. The placing of animals in a chemical bath for disinfection and removal of parasites such as ticks. Anno: 65 ALR 543.

dipsomania. An irresistible craving for alcoholic beverages; an irresistible impulse to indulge in intoxication, either through the medium of alcohol or other drugs, such as opium. This mania or disease is classed as one of the minor forms of insanity. *Ballard v State*, 19 Neb 609, 614, 28 NW 271.

direct. Verb: To guide; to regulate; to control. Sometimes creative of a trust as a precatory term. *Collister v Fassitt*, 163 NY 281, 57 NE 490. Adjective: Immediate or proximate as distinguished from remote. *Ermentrout v Girard Fire & Marine Ins. Co.* 63 Minn 305, 65 NW 635; *Mork v Eureka-Security F. & M. Ins. Co.* 230 Minn 382, 42 NW2d 33, 28 ALR2d 987.

direct ascending line. The line of descent traced upward from intestate son, grandson, daughter, granddaughter, great grandson, great granddaughter, etc., to the ancestor. 23 Am J2d Desc & D § 36.

direct attack. A challenge of the integrity of a judgment, in the action wherein the judgment was rendered, by a proceeding maintained for the express purpose of vacating, suspending, annulling, reversing, or modifying the judgment. *Mitchell v Village Creek Drainage Dist.* (CA8 Ark) 158 F2d 475; *Hall v Huse*, 122 Ark 67, 182 SW 535; *Mastin v Gray*, 19 Kan 458, 466. Some authorities regard a suit to obtain equitable relief by way of an injunction against the enforcement of a judgment or by the

annulment or setting aside of a judgment as a direct attack upon the judgment. Other authorities say that such a suit is an indirect attack upon the judgment, although not to be regarded as a collateral attack. 30A Am J Rev ed Judgm § 856.

direct bounty. A certain amount paid upon the production or exportation of particular articles. The act of Congress of 1895, allowing a bounty upon the production of sugar, and Rev. Stat. §§ 3015-3027 (U. S. Comp. Stat. 1901, pp. 1989-1994), allowing a drawback on certain articles exported, are examples of direct bounties. *Downs v United States*, 187 US 496, 502, 47 L Ed 275, 277, 23 S Ct 222.

direct cause. An active and efficient cause, that is, a proximate cause.

See **proximate cause**.

direct competition. See **competition**.

direct contempt. Words spoken or acts done in the presence of the court, or during its intermissions, which tend to subvert, embarrass or prevent justice, such as telling the judge that he is ignorant and unfair. *State v Goff*, 28 SC 17, 88 SE2d 788, 52 ALR2d 1292.

direct corporate purpose. A characterization of a purpose of the exercise of power by a municipal corporation which operates with direct and immediate consequences upon the interests of the corporation, such as the suppression of vice and the promotion of good order. *State ex rel. Thompson v Memphis*, 147 Term 658, 251 SW 46, 27 ALR 1257, 1264.

direct criminal contempt. Conduct directed against the power and dignity of the court during a session of court and in the immediate view and presence

[350]

of the court. *Lynn v State*, 38 Okla Crim 313, 260 P 1069.

See **criminal contempt**.

direct damages. In one sense, damages which result from a wrongful act without the intervention of any other efficient cause. *Loiseau v Arp*, 21 SD 566, 114 NW 701. In another sense, the direct or proximate, as distinguished from the remote, consequences of a wrongful act. 22 Am J2d Damg § 20.

direct descending line. The line of descent from intestate to his children, grandchildren, great grandchildren, etc. 23 Am J2d Desc & D § 54.

directed. Guided, regulated, controlled.

As used in a statute by which someone is "directed" to perform an act, the word, if standing alone, may well be construed as implying something mandatory, but other words in the context may so control it as to give it the effect of importing discretionary action on the part of the person "directed." *Binney v Chesapeake & Ohio Canal Co. (US)* 8 Pet 201, 212, 8 L Ed 917, 921.

directed verdict. A verdict which a jury returns as directed by the court. 53 Am J1st Trial §§ 332 et seq.

See **motion for directed verdict**.

direct evidence. Proof which speaks directly to the issue, requiring no support by other evidence; proof in testimony out of the witness' own knowledge, as distinguished from evidence of circumstances from which inferences must be drawn if it is to have probative effect. 29 Am J2d Ev § 264.

direct examination. The examination in chief of a witness by the party who called him to the stand.

See **examination in chief; question in chief; redirect examination.**

direct infringement. An infringement of a patent by one's own act, as distinguished from a contributory infringement. See **contributory infringement; infringement of patent.**

directing powers. See **determinative powers.**

direct injury. The direct result of the violation of a legal right. *Alabama Power Co. v Ickes*, 302 US 464, 82 L Ed 374, 58 S Ct 300.

See **direct damages; proximate cause.**

direction. A command; an order; an instruction to an agent or servant; a court's instruction to a jury; the complainant's address to the court in a bill in equity; control; management; superintendence.

See **direct; directed; directed verdict.**

direction against apportionment. A special type of tax clause in a will aimed at avoiding or overcoming a statute providing for proration of the estate tax. 28 Am J Rev ed Inher T § 489.

directional signals. Equipment upon a motor vehicle for use in warning other drivers before making a turn. 7 Am J2d Auto § 157.

directional survey. A survey had by way of discovery to ascertain whether an oil well is draining oil from adjoining premises. 23 Am J2d Dep § 184.

direct line. See **direct ascending line; direct descending line.**

direct loss or damage by fire. Loss or damage occurring with fire as the destroying agency, as distinguished from fire as a remote agency of loss. 29A Am J Rev ed Ins § 1288. A loss which is immediate or proximate, as distinguished from remote or incidental. *Clouse v St. Paul F. & M. Ins. Co.* 152 Neb 230, 40 NW2d 820, 15 ALR2d 1008. But proximate results may include other things than combustion, such as the resulting fall of a building. *O'Connor v Queen Ins. Co.* 140 Wis 388, 122 NW 1038.

directly. In a direct manner; in a straight line or course; without curving, swerving, or deviation. *State ex rel. Norton v Van Camp*, 36 Neb 9, 13.

directly affected. See **involved.**

directly essential to production. Under the Fair Labor Standards Act covering an employee in an occupation "closely related" and "directly essential" to the production of goods for commerce, the employee's work need not be indispensable to production. *General Electric Co. v Porter*, 208 F2d 805, 44 ALR2d 854.

directly interested in labor dispute. Interested as the employer; interested as an employee in hours, wages, or working conditions involved. Anno: 28 ALR2d 338, 339.

directo. See **ex directo.**

Director of the Census. The head of the Federal Bureau of the Census, appointed by the President with the advice and consent of the Senate, and directed by law to perform such duties as may be imposed upon him by statute, regulations, or orders of the Secretary of Commerce. 14 Am J2d Census § 3.

directors. Agents and executive representatives of a corporation, who, acting as a board or unit, manage the business of the corporation, constituting, as it has been said, the mind and soul of the corporation, acting according to their best judgment, and beyond control by the stockholders in respect of any particular action taken. 19 Am J2d Corp §§ 1079 et seq.

Corporate directors act as a board, this is, as a unit, in representing the corporation, and transacting its business, but as individuals in the performance of some of their duties, such as inspection of corporate records. State ex rel. Keller v Grymes, 65 W Va 451, 64 SE 728.

See **dummy director.**

directors' meeting. The coming together of the directors of a corporation to determine their course of action in corporate affairs is an official body. 19 Am J2d Corp §§ 1118 et seq.

directors of bank. Executive representatives of a banking corporation elected by the stockholders, who, acting as a board, manage and control the affairs and business of the corporation. 10 Am J2d Banks §§ 77, 176.

directory. Noun: A listing of the names and addresses of the persons in a particular city, of the members of a fraternal order, club, or profession, or of the subscribers to telephone service in a city or area. Adjective: That which is merely advisory or instructive, as opposed to that which is mandatory.

directory part of a statute. The part which directs that which is to be done or not to be done, the other parts being the declaratory and vindicatory portions. 50 Am J1st Stat § 151. The provision of a statute which is directory or permissive, as distinguished from mandatory provisions of the same statute. 50 Am J1st Stat § 18.

See **directory statute.**

directory statute. A statute whose provisions are a matter of form only, are not material, do not affect any substantial right, and do not relate to the es-

[351]

sence of the thing to be done, so that compliance is a matter of convenience rather than substance. 1 Am J2d Adm L § 46; 50 Am J1st Stat § 25.

directory trust. A trust in which, by the terms of the trust, the trust funds are to be invested in a particular manner until the time arrives at which they are to be appropriated. Deaderick v Cantrell, 18 Tenn 263.

direct payment. A payment which is absolute and unconditional as to time, amount, and the persons by whom and to whom it is to be made. Ancient Order of Hibernians v Sparrow, 29 Mont 132, 74 P 197. A payment made directly to the obligee, not to an intermediary,

direct proceedings. A direct attack upon a judgment.

See **direct attack.**

direct property tax. The primary form of taxation in most states. 51 Am J1st Tax § 408.

See **direct taxes.**

direct settlement. A term common in board of trade transactions, signifying the method of settlement consisting simply in setting off contracts to buy a certain amount of a given commodity at a certain time, against contracts to sell a like amount of it at the same time, and paying the difference of price in cash, at the end of the business day. *Chicago Board of Trade v Christie Grain & Stock Co.* 198 US 236, 247, 49 L Ed 1031, 1037, 25 S Ct 637.

direct taxes. Capitation or poll taxes levied without regard to property, profession or other circumstances; taxes on land. *Springer v United States*, 102 U S 586, 26 L Ed 253. Also, taxes levied directly on personal property because of ownership. *Pollock v Farmers' Loan & T. Co.* 157 US 429, 39 L Ed 759, 15 S Ct 673. Such taxes may be distinguished from taxes on importations, consumption, manufacture and sale of commodities, and taxes on business and occupation privileges and the like which Congress may impose without apportionment. The Federal income tax is a direct tax but the requirement of the Constitution that it be apportioned among the states according to population was removed by the Sixteenth Amendment.

direct trust. Same as **express trust**.

diribitores. Persons who distributed the ballots to the voters at a Roman election.

dirimant impediments. Those bars to lawful matrimony which are not removed by a consummation.

dirk. A deadly weapon. 56 Am J1st Weap § 3..

See **dagger**.

dirt. Loose earth as distinguished from firm rock. *Highley v Phillips*, 176 Md 463, 5 A2d 824. Anything unclean. Gossip.

See **visible dirt**.

disability. A deprivation of ability; a state of being disabled. *Miller v American Mut. Acci. Ins. Co.* 92 Tenn 167, 21 SW 39. Want of competent power, strength, or physical ability; weakness; incapacity; impotence. *Hill v Travelers' Ins. Co.* 146 Iowa 133, 124 NW 898. Loss of earning power; loss of a limb or member. 58 Am J1st Workm Comp § 282. Under some workmen's compensation statutes, impairment of physical efficiency, even though earning power has not been lost. 58 Am J1st Workm Comp § 282. As used in a policy of accident insurance, the bare term "disability" means disability from performing the occupation which the insured was following at the time of the accident, and not some vocation which he might be able to follow after the accident. *Ozark Mut. Life Asso. v Winchester*, 116 Okla 116, 243 P 735; 29A Am J Rev ed Ins § 1518. For the purposes of the Social Security Act, inability by reason of a medically determinable physical or mental impairment, to engage in substantial and gainful activity, commensurate with his age, educational attainments, training, experience, and mental and physical capacities. *Teeter v Fleming* (CA7 Ind) 270 F2d 871, 77 ALR2d 636.

Want of legal capacity, such as infancy, insanity, and loss of rights consequent to the conviction of a crime. *Berkin v Marsh*, 15 Mont 152, 44 P 528; 23 Am J2d Crim L § 616.

See **legal disability; total disability; total mental disability; total physical disability**.

disability clause. A clause in a policy of life insurance providing for a waiver of premiums in the event of the disability of the insured occurring while the policy is in effect, sometimes for monthly or other periodical payments to be made to the insured during the continuance of the disability so incurred.

disability provisions. The terms of health and accident insurance policies, and life insurance policies with disability features, which define and describe the risk covered by the policy. 29A Am J Rev ed Ins § 1504.

disable. To make unfit physically or to incapacitate one to transact business. As used in a statute defining mayhem, the word is held to import a permanent disability, and not a mere temporary one. *Vawter v Commonwealth*, 87 Va 245, 12 SE 339; Anno: 58 ALR 1320.

disabled from earning a livelihood. Physically incapacitated. Also where a man is so inattentive or forgetful as a result of mental disorder that he cannot be trusted to carry on even simple forms of work, he is as truly disabled from earning a livelihood as one who must refrain from work on account of the condition of his vital organs. *United States v Taylor* (CA4 NC) 110 F2d 132.

disabling statutes. The statutes, also called the "restraining statutes " passed in the reign of Elizabeth which curbed the leasing of lands by the church and by eleemosynary corporations, and resulted in the turning over to Elizabeth of much valuable land by the prelates, for which she paid nothing. See 2 Bl Comm 320.

disadvantage to promisee. See **detriment**.

disadvocare. To disavow; to deny.

disaffirm. To repudiate a voidable obligation or deed.

disaffirmance. The repudiation of a voidable obligation or deed, sometimes by the subsequent conveyance of the same premises to a third person. *Searcy v Hunter*, 81 Tex 644.

disafforest. To release a forest from the operation of the forest laws. Many forests were thus stripped of their oppressive privileges and regulations by the *Charta de Foresta*, 9 Henry 111. See 2 Bl Comm 416.

disaffranchise. Same as **disfranchise**.

disagreement. A jurisdictional term in the federal statute in reference to veterans' insurance, meaning a denial of a claim for insurance benefits, after consideration of its merits, by the Administrator of Veterans' Affairs or any employee or organizational unit of the Veterans Administration designated

[352]

therefor by the Administrator of Veterans' Affairs. 29A Am J Rev ed Ins § 1988.

disagreement of jury. See **hung jury**.

disallow. To overrule; to reject; to deny.

disalt. To disable.

disappropriation. The severing of an appropriation from the benefice to which it was annexed, either by presentation of a clerk by the appropriator or patron and his induction to the parsonage, or by the dissolution of the corporation which had the appropriation. See 1 Bl Comm 385.

disapprove. To refuse to approve, confirm, ratify, sanction, or consent to some act or thing done by another. *Stewart v Yellowtail* (DC Mont) 35 F Supp 799.

disaster relief. Aid to farmers suffering financially from drought, crop failure, calamity, or disaster. 3 Am J2d Agri § 32. Also aid to the inhabitants of a particular city or political subdivision who have suffered losses of property from fire, hurricane, flood, or extremely cold and bitter weather. Emergency relief in furnishing food, clothing, medical and nursing services.

disavow. To repudiate; to disclaim.

disband. To cease to exist as a body. To dissolve a body, such as a school district. *Briggs v Borden*, 71 Mich 87, 38 NW 712.

disbar. To pronounce a judgment or make an order of disbarment of an attorney; to revoke an attorney's license to practice law. 7 Am J2d Attys § 12.

disbarment. The revocation by judgment or order of court of the right of an attorney at law to practice. 7 Am J2d Attys § 12.
See **grounds for disbarment.**

disbarment proceeding. A proceeding instituted by an aggrieved client, the state's attorney, a bar association, a committee of a bar association, an individual attorney at law, or a group of attorneys at law not constituting a committee of a bar association, or instituted by the court on its own motion, seeking the disbarment of an attorney at law for cause or causes stated. 7 Am J2d Attys §§ 60 et seq.

disbocation. The clearing of wooded land; the changing of wooded or forest land into pasture.

discarcare. To discharge or unload a cargo.

discargare. Same as **discarcare.**

disceptatio causae. Same as **disceptio causae.**

disceptio causae. The argument of a cause by counsel.

discharge. Noun: The performance of an obligation or duty. A release because of performance or as a matter of grace. *Union Bank v Powell's Heirs*, 3 Fla 175. A release of a debtor in insolvency proceedings by operation of law. 29 Am J Rev ed Insolv § 88. A release from custody, as the discharge of an accused, or release from the performance of a duty, as the discharge of a juror. The separation of a civil service officer or employee from the service. 15 Am J2d Civ S § 33. The release of a member of one of the armed services from such service. 36 Am J1st Mil § 36. The dismissal of an employee. Verb: To perform obligations; to release from a prison or from duty. To release a member of one of the armed services from the service. To dismiss an employee. To unload or deliver cargo from a vessel or freight from a railroad car.

See **honorable discharge.** See also terms and expressions following which commence **discharge.**

discharged. The termination of a contract by performance in accordance with its terms. 17 Am J2d Contr § 482. Released from performance of duty; dismissed from employment; released from one of the armed services. 36 Am J1st Mil § 36.

A convict is "discharged" from prison when he is restored to freedom. It may not mean that he has been given the right of suffrage, or the right to hold office, if he lost those rights by conviction, but it does mean that in all other respects he is a citizen, and fully protected in his rights under the organic law. *Ex parte Schatz*, 307 Mo 67, 269 SW 383, 38 ALR 1032, 1035. As the word is used in a statute exempting a person from jury service who has been "discharged" as a juror within a year, it means one who is discharged from the panel, or for the term, and not one who has been discharged from a case at the close of a trial. *White v United States* (CA9 Cal) 16 F2d 870.

discharge for money. A receipt for money; a receipted bill; a voucher for money spent. *Commonwealth v Brown* 147 Mass 585, 18 NE 587.

discharge from draft. A certificate given one who has reported to his draft board for immediate military service but is permitted to return home, without entering the service, because of the termination of hostilities. *Patterson v Lamb*, 329 US 539, 91 L Ed 485, 67 S Ct 448.

discharge from military service. See **discharge**.

discharge from payment of tithes. See **de modo decimandi**.

discharge in bankruptcy. The release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted from discharge by the Bankruptcy Acts Bankruptcy Act § 1(15); 11 USC § 1(15).

discharge of attachment. The dissolution of an attachment (1) upon the occurrence of certain events after the levy, e. g. the loss of legal possession of the goods attached, (2) upon the entry or receipt of security, or (3) as the result of some proceeding taken for the express purpose of defeating or nullifying the attachment. 6 Am J2d Attach § 408.

discharge of bill or note. An expression with a dual aspect, meaning the discharge of the instrument itself and the discharge of the persons primarily and secondarily liable thereon. The NIL provides for discharge of the instrument by specified methods and for discharge of persons secondarily liable by specified methods. The Commercial Code takes a new approach to the concept of discharge. The Code generally does not speak of discharge of the instrument but of discharge of all parties and the discharge of any single party. The methods of discharge are collected and referred to in a single section. 11 Am J2d B & N § 901.

discharge of guardian. The release of a guardian from his trust, either by order of court or by a settlement with his ward when the ward becomes of age or ceases to be incompetent. *Berkin v Marsh*, 18 Mont 152, 44 P 528.

discharge of jury. The remedy of the prejudiced party upon a mistrial. 53 Am J1st Trial § 965. The

[353]

release of a jury from further service in a case or a release of all jurors upon the list upon completion of their work at the term.

discharge of officer in armed forces. A separation from the service at the request of the officer. In any other connection, the term implies some measure of discredit. *United States v Sweet*, 189 US 471, 473, 47 L Ed 907, 908, 23 S Ct 638.

discharge of prisoner. A remedy sought by motion on presenting exceptions to the return to a writ of habeas corpus. *Ex pane Mooney*, 26 W Va 36.

discharge of surety. The release of a surety upon performance of the obligation or by operation of law. 50 Am J1st Suret § 40.

discharge of watercourse. The place where a stream or watercourse empties or discharges itself into some other watercourse or body of water. See 56 Am J1st Wat § 10.

discipline. Good conduct; training in good conduct. The maintenance of good order in a voluntary association or club, in a last resort by suspension or even expulsion of a member. 6 Am J2d Asso & C § 32. As applied to a soldier or militiaman, the word means system of drill; systematic training; training to act in accordance with established rules; accustoming to systematic and regular action. *State ex rel. Poole v Peake*, 22 ND 457, 135 NW 197.

See **corporal punishment**.

disclaimer. A renunciation or refusal to accept. A refusal to recognize the existence of an obligation. A refusal to retain title obtained as the grantee of a deed not accepted by the grantee. 23 Am J2d Deeds § 127. The object of a deed is to transfer property, but the object of a disclaimer is to prevent a transfer. *Watson v Watson*, 13 Conn 83, 85.

In patent law procedure, a statement filed by the patentee for the surrender of a separate claim in the patent, or some other distinct and separable matter, which can be excised without mutilating or changing what is left standing. 40 Am J1st Pat § 105.

A pleading filed by a defendant in a suit in equity, setting forth that he has no interest in the subject matter of the suit. 27 Am J2d Eq § 196.

disclaimer of paternity. A refusal to acknowledge a child as one's own. 10 Am J2d Bast § 29.

disclaimer of tenure. The disclaimer of a tenant in an action against him for rent.

disclamation. Same as **disclaimer**.

disclose. To make known that which before was unknown.

disclosed principal. A situation where the other party to a transaction conducted on the one side by an agent knows that the agent is acting for a principal and has notice of the principal's identity. 3 Am J2d Agency § 307.

discommission. To deprive a person of his office or commission.

discommon. To deprive of a right of common; to change common property into private property.

discontinuance. In the modern sense of the term, a voluntary dismissal or the taking of a nonsuit; at early common law, the failure of a litigant to continue his suit regularly from day to day or from term to term between the commencement of the action and final judgment. 24 Am J2d Dism § 2. The abandonment of work on a project. The abandonment of a use which is nonconforming under a zoning ordinance. Anno: 18 ALR2d 729.

discontinuance of estate. The termination or interruption of an estate tail by a grant by the tenant in tail of a larger estate than he had, thereby either defeating the estate of the tenant in tail or that of the remainderman or reversioner. See 3 Bl Comm 171.

discontinuance of highway. The abolition or vacation of a highway. 25 Am J1st High § 127.

discontinuance of service. The conduct of a public service corporation in refusing to continue operations to supply existing needs. 43 Am J1st Pub Util § 78. Shutting off service to customer for nonpayment of bill for service furnished. 43 Am J1st Pub Util § 64.

discontinued. Abandoned. The term as used in a zoning ordinance provision that if a nonconforming use is discontinued, any new use of the premises shall be in conformity with the provisions of the ordinance, connotes a voluntary act and is synonymous with abandon. Anno: 18 ALR2d 729.

discontinuous easement. An easement characterized by a use not so continuous as to be conspicuous. 25 Am J2d Ease § 32. An easement which can only be enjoyed by the intervention of a human agency, such as a right of way. In some states continuous easements will pass by implication in a grant and discontinuous easements will not. Anno: 34 ALR 234.

disconvenable. Improper; inappropriate.

discooperta. Same as **discovert.**

discount. In the broad sense, a deduction from a sum in gross; a reduction from a regular price of an article offered for sale. In a technical sense, interest reserved from the amount lent at the time of making the loan. 30 Am J Rev ed Int § 12. In the banking business a charge for a loan in advance, whether called interest, compensation, or premium, the amount of the discount being deducted from the principal and retained by the bank at the time of making the loan. 10 Am J2d Banks § 689. A rate applied in the commutation of periodical payments to a payment in a lump sum. Anno: 105 ALR 242.

discounting commercial paper. The lending of money upon commercial paper and the deducting of the interest or premium in advance. 10 Am J2d Banks § 689.

discover. Ascertain by sight, hearing, or smell, and by information obtained from others. *Carroll v United States*, 267 US 132, 69 L Ed 543, 45 S Ct 280, 39 ALR 790.

discovered. Having acquired actual knowledge of something, such as defalcation by an employee within the coverage of a fidelity bond. Anno: 23 ALR2d 1076.

See **after-discovered; discover.**

discovered peril. For all practical purposes the doctrine of discovered peril is the same in scope and effect as the last clear chance doctrine. *Soards v Shreveport Rys. Co.* (La App) 8 So 2d 343, 344.

See **last clear chance.**

discovert. The condition or status of a woman who is at present without a husband, whether she be unmarried, widowed or divorced.

discoverture. The changing of the

[354]

status of a married woman by the death of her husband or the obtaining of a divorce from him.

discovery. The finding of something, perchance a cure for a disease, a new land, a new planet, or a mechanical principle which may be adapted to produce an article which has the requisite of patentability. 40 Am J1st Pat § 39. A finding of mineral, the primary factor in the perfection of a mining claim. 36 Am J1st Min & M § 83. The showing of mineral must be of such character that a person of ordinary prudence, whether he is a miner or not, would feel justified in expending further time and money in development of the property in view of prospects of profit. 36 Am J1st Min & M § 87. A remedy for the sole purpose of compelling the adverse party to answer its allegations and interrogatories, and thereby to disclose facts within his own knowledge, information, or belief, or to disclose and produce documents, books and other things within his possession, custody or control, being usually employed to enable a party to prosecute or defend an action. 23 Am J2d Depos § 141.

See **bill of discovery; discovery and occupation; pure bill of discovery; statutory discovery.**

discovery and occupation. A method of acquiring territory on behalf of a nation. 30 Am J Rev ed Internat L § 42; 54 Am J1st US § 77.

By the law of nations, dominion of new territory may be acquired by discovery and occupation, as well as by cession or by conquest; and when citizens or subjects of one nation, in its name and by its authority or with its assent, take and hold actual, continuous, and useful possession (although only for the purpose of carrying on a particular business, such as catching and curing fish or working mines) of territory unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired. *Downes v Bidwell*, 182 US 244, 45 L Ed 1088, 21 S Ct 770.

discovery shaft. A shaft which the mining laws of some states require to be sunk within a prescribed number of days after discovery. 36 Am J1st Min & M § 88.

discredit. To injure a person's credit or reputation; to refuse credence; to distrust; to discredit the testimony of a witness is to distrust it, to disbelieve it, to regard it as false. *People v Clark*, 84 Cal 573, 24 P 313.

discrepancy. Difference appearing upon comparison; inconsistency. A variance between a party's pleading and his proof.

Discretio est discernere per legem quid sit justum. Discretion is the discernment, through the law, of that which is just. "That is, to discern by the right line of law, and not by the crooked cord of public opinion." *Commonwealth v Anthes*, 71 Mass (5 Gray) 185, 204.

Discretio est scire per legem quid sit justum. Discretion is the knowledge of that which is just through the law. *Le Roy v Corporation of New York (NY)* 4 Johns Ch 352, 356.

discretion. The equitable decision of what is just and proper under the circumstances; the liberty or power of acting without other control than one's own judgment. *The S.S. Styria v Morgan*, 186 US 1, 9, 46 L Ed 1027, 1033, 22 S Ct 731. The power or right conferred upon an officer of acting officially under certain circumstances according to the dictates of his own judgment and conscience, uncontrolled by the judgment or conscience of others. *United States ex ref. Accardi v Shaughnessy*, 347 US 260, 98 L Ed 681, 74 S Ct 499; *Farrelly v Cole*, 60 Kan 356, 56 P 492; 2 Am J2d Admin L § 191.

See **abuse of discretion; age of discretion; judicial discretion; legal capacity.**

discretionary divorce. A divorce granted by a court under a statute permitting the granting of a divorce for such cause or causes as the court may find sufficient.

discretionary duty. A duty imposed upon an officer for the performance of an act which involves the exercise of discretion by the officer, the duty not being defined with such precision and certainty as to leave nothing to the exercise of discretion. *State ex ref. Linden v Bunge*, 192 Wash 245, 73 P2d 516.

discretionary interest. Interest which is awarded by way of damages in any case where it is a matter within the discretion of the court to award interest or to refuse to do so. *Redfield v Ystalyfera Iron Co.* 110 US 174, 28 L Ed 109, 3 S Ct 208. A discretionary rate of interest allowed as damages. 22 Am J2d Damg § 182.

discretionary trust. An anomalous term from the standpoint of absolute discretion in the trustee, since unbridled discretion in a trustee negatives the necessary separation of legal and equitable ownership. Best defined as a trust in which a broad discretion is vested in the trustee to be exercised in carrying out purposes and objectives for the benefit of another, which are required by the terms of the trust. 54 Am J1st Trusts § 36. A trust which exists when, by the terms of the trust, no direction is given to the trustee as to the manner in which the trust funds are to be invested, until the time arrives at which they are to be appropriated in satisfaction of the trust. *Deaderick v Canfrell*, 18 Tenn 263. A trust designed to prevent alienation by lodging discretion in the trustee as to the payment of income and withholding from the beneficiary a vesting of the equitable right to compel the distribution. *Re Bucklin's Estate*, 243 Iowa 312, 51 NW2d 412, 34 ALR2d 1327.

discretion of administrative agency. A power or right, conferred upon an agency by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience as to what is just and proper under the circumstances, uncontrolled by the judgment or conscience of others. 2 Am J2d Admin L § 191.

discretion of court. A scope of authority of determination granted to a trial court which, in the absence of abuse of discretion, accords finality to a determination made, so that it is not reviewable by a higher court. 4 Am J2d A & E § 80. Necessarily a sound discretion, or as it is sometimes stated, a legal discretion. 20 Am J2d Cts § 69. Exercising the best of judgment upon the occasion that calls for it. *Tompkins v Sands* (NY) 8 Wend 462. Nothing more nor less than a discretion to do in any particular case what the ends of justice demand. *Sioux Falls v Marshall*, 48 SD 378, 204 NW 999, 45 ALR 447, 451. The sound choosing by the court, subject to the guidance of the law, between doing or not doing a thing, the doing of which cannot be demanded as an absolute right. *Chapman v Dorsey*, 230 Minn 279, 41 NW2d 438, 16 ALR2d 1015.

A court without discretion would be a hobby horse. *Watts v State*, 22 Tex App 572, 577.

[355]

discriminating duty. An additional customs duty imposed on an imported article of a kind for the manufacture, production, and export of which in and from this country a bounty is paid. 21 Am J2d Cust D § 14.

discrimination. Failure to treat everyone alike according to the standards and rule of action prescribed, that is, unreasonable and arbitrary action. 2 Am J2d Admin L § 193. Class legislation and the denial of equal protection of the laws. Arbitrary inclusions or exclusions of persons from the list for jury duty. 31 Am J Rev ed Jur § 93. A purposeful and systematic exclusion of persons from the jury list on the basis of race or color. 31 Am J Rev ed Jur § 12. The denial of suffrage on the basis of a classification according to race. 25 Am J2d Elect § 55.

See **advantage, concession and discrimination; class legislation; equal protection; price discrimination.**

discrimination by common carrier. Any act, device, or arrangement by a common carrier which operates to give to one or more patrons rates, services, or privileges not accorded to all under similar conditions or circumstances, or, vice versa, which operates to render unavailable to some patrons rates, services, or privileges which are available to others similarly situated. 13 Am J2d Car § 197.

As applied to freight rates, the term implies a charge to shippers of freight, as compensation for railroad transportation, of unequal sums of money for the same quantity of freight, for equal distances, more for a shorter than a longer distance, more in proportion of distance for a shorter than a longer distance; more for "local freights," than for "through freights;" more for the former, in proportion of the distance such freights may be carried, than the latter, the railroads being prompted to make such charges by unreasonable competition between two or more of them at competing points. *Freight Discrimination Cases*, 95 NC 434, 446.

To constitute an "unjust discrimination" in passenger rates, the carrier must charge or receive directly from one person a greater or lesser compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but, in either case, it must be for a like and contemporaneous service in the transportation of alike kind of traffic, under substantially similar circumstances and conditions. *Interstate Commerce Com. v Baltimore & Ohio Railroad Co.* 145 US 263, 281, 36 L Ed 699, 705, 12 S Ct 844.

discumberment. A release of property from an encumbrance or lien.

discussion. A civil law term meaning the seizure and sale of the property of the principal to satisfy the demand against him before proceeding against that of the surety. *Schmidt v New Orleans*, 33 La Ann 17, 18.

See **benefit of discussion.**

disease. In a strict or literal sense, any departure from a perfect norm of health, even including some ailments which are more or less trivial. *Mutual Life Ins. Co. v Simpson*, 88 Tex 333. Better understood in a legal sense as an ailment or disorder of an established or settled character to which the insured is subject, having no reference to a temporary disorder which is new and unusual, and arises from some sudden and unexpected derangement of the system, although it may produce or cause unconsciousness. 29A Am J Rev ed Ins § 1211. As the term "disease" appears in a health insurance policy it is not the equivalent of sickness; sickness is a condition interfering with one's usual activities, whereas disease may exist without such

result. 29A Am J Rev ed Ins § 1154. A "disease in any organ of the body" is not every disorder or ailment affecting an organ, lasting for a brief period only and unattended by substantial injury or inconvenience, or prolonged suffering, but is an affection so well defined and marked as materially to derange for a time the functions of that organ. Connecticut Mut. Life Ins. Co. v Union Trust Co. 112 US 250, 258, 28 L Ed 708, 711, 5 S Ct 119.

In an accident policy the words "bodily infirmity or disease" have a well understood meaning. They are practically synonymous and refer to an ailment or disease of a settled character and all the definitions given by the courts negative the idea that they could possibly include a personal peculiarity not in any way impairing bodily health or strength and not in any way interfering with the functioning of the organs of the body. Mutual Life Ins. Co. v Dodge (CA4 Md) 11 F2d 486.

In a strict or literal sense, any departure from an ideal or perfect norm of health is a disease or an infirmity, but when considered with relation to a policy insuring against death caused by "accidental means alone" something more must be shown. If there is no active disease, but merely a frail general condition, so that powers of resistance are easily overcome, or merely a tendency to disease, which is started up and made operative, whereby death results, then there may be recovery even though the accident would not have caused that effect upon a healthy person in a normal state. Bush v Order of United Commercial Travellers (CA2 Vt) 124 F2d 528.

See **chronic; contagious disease; exposed to disease; idiopathic disease; illness; incurable disease; industrial disease infectious disease; occupational disease; serious ailment; serious illness; sickness; sound health; sound physical condition; traumatic disease.**

disembargo. To release from the restrictions of an embargo.

disencumber. To remove an encumbrance, as, to pay off a mortgage debt; to relieve of a burden.

disencumbrance. The removal of an encumbrance, such as a mortgage; the removal of a burden.

disentail. To break the entail of an entailed estate. This was effected by a disentailing deed whereby the tenant in tail conveyed an absolute title to his grantee, which was authorized by statute in the reign of William the Fourth.

disentailing deed. See **disentail.**

disestablish. A labor law expression which means the divesting of an agent for collective bargaining of his authority as such. 31 Am J Rev ed Lab § 281.

disfigure. To cause a disfigurement.

See **disfigurement.**

disfigurement. "That which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner." Superior Mining Co. v Industrial Com. 309 Ill 339, 141 NE 165. A change of external form for the worse. Dickson v United States Sheet & Window Glass Co. 3 La App 83.

As used in a statute defining mayhem, the word

[356]

means a permanent and not a mere temporary disfigurement. State v Taylor, 105 W Va 298, 142 SE 254. The offense of disfiguring a domestic animal may be complete with no injury of a permanent character. Thus, to shave a horse's mane or tail is a disfiguring of the horse. State v Harris, 11 Iowa 414, 415.

disforest. To clear wooded land of trees.

disfranchise. To effect a disfranchisement.

See **disfranchisement**.

disfranchisement. The taking away of a franchise, a person's citizenship, or his right of suffrage. The absolute expulsion of a member from a corporation, and the taking away of his franchise of being a member. *White v Brownell* (NY) 2 Daly 329, 357.

See **amotion**.

disgavel. To remove from land the incidents of gavelkind tenure, under which the lands descended equally to all of the sons of the tenant.

disgrace. A cause of shame or reproach; that which dishonors; a state of ignominy, dishonor, or shame. *Slawson v State*, 39 Tex Crim 176, 178. Loss or respect; disrepute; an element of actionable defamation. 33 Am J1st L & S § 45.

disgrade. To deprive a person of a title or dignity.

disguise. Verb: To conceal identity by assuming or giving a false appearance or guise, as by wearing an unusual clothing or dress. Noun: Clothing, dress, wigs, goggles, or other device put on to conceal identity. Artifice in speech or manner employed to conceal identity. *DarNeal v State*, 14 Okla Crim 540, 174 P 290, 1 ALR 638, 641.

dishabilitation. Corruption of blood. A sentence of dishabilitation was imposed as a punishment for treason.

disherison. Same as **disinheritance**.

disheritor. A testator who disinherits his heir.

dishes. Containers for serving food and holding food; in one sense, household furniture. 29 Am J Rev ed Ins § 298.

dishonesty. Want of honesty; lying; stealing; defrauding. Something more than mere negligence, mistake, error in judgment, or incompetence. *Irvin Jacobs & Co. v Fidelity & Deposit Co.* (CA7 Ill) 202 F2d 794, 37 ALR2d 889. But not necessarily such conduct as imports a criminal offense. *Citizens' Trust & Guaranty Co. v Globe & Rutgers Fire Ins. Co.* (CA4 NC) 229 F 326.

dishonor. Loss of respect; shame and disgrace. Nonpayment of a bill or note. Nonacceptance of a bill or draft.

See **fraud or dishonesty**.

dishonor by nonacceptance. A term of the commercial law.

A bill is dishonored by nonacceptance when it is duly presented for acceptance and the prescribed acceptance is refused or cannot be obtained, or when presentment for acceptance is excused and the bill is not accepted. 11 Am J2d B & N § 736.

dishonor by nonpayment. A negotiable instrument is dishonored by nonpayment when it is duly presented for payment and payment is refused or cannot be obtained, or when presentment is excused and the instrument is overdue and unpaid. 11 Am J2d B & N § 739.

disincarcerate. To release a prisoner from imprisonment.

disincorporate. To relinquish a corporate charter; to cause a corporation to cease to exist as a corporation.

disinherison. Same as **disinheritance**.

disinheritance. Disinheriting an heir; depriving an heir of his inheritance of right to succeed to the estate of his ancestor.

disinter. To exhume or remove a body that has been buried in the earth; to take out of the grave. *People v Baumgartner*, 135 Cal 72, 74, 66 P 974.

See **body snatching; disturbing dead body.**

disinterested. Having no interest in a matter or cause. *Jones v Larrabee*, 47 Me 474, 476.

See **interested.**

disinterested appraiser. An appraiser who not only is without any pecuniary interest in the property appraised, but one who is not biased or prejudiced in reference to the parties or the property. *L. D. Hickerson & Co. v German-American Ins. Co.* 96 Tenn 193, 33 SW 1041. The mere fact of other employment by insurance companies does not, as a matter of law, disqualify one from selection as a "disinterested appraiser." *Schreiber v Pacific Coast Fire Ins. Co.* 195 Md 639, 75 A2d 108, 20 ALR2d 951.

disinterested juror. A juror without a disqualifying interest such as relationship to a party within a degree prohibited as to jurors. *Jewell v Jewell*, 84 Me 304, 24 A 858.

disinterested malevolence. An epigrammatic phrase coined by Mr. Justice Holmes which is supposed to mean that the genesis which will make a lawful act unlawful must be a malicious one unmixed with any other and exclusively directed to injury and damage of another. *Beardsley v Kilmer*, 236 NY 80, 140 NE 203.

disinterested witness. A witness who is not biased by reason of any interest in the action.

disinterment. The removal of a body from a grave.

See **disinter.**

disjunctim. Separately; severally; disjunctively.

disjunctive allegations. Allegations in a pleading in the disjunctive form, that is, an alternative form, and the clauses of which are usually separated by the word "or." The general principle is that allegations in such form vitiate a pleading. 41 Am J1st Pl § 41. An indictment, information, or affidavit is rendered bad by allegations in the disjunctive, unless such form is authorized by statute. 27 Am J1st Indict § 127.

disjunctive condition. A condition which depends upon the happening of but one of several events.

disjunctive denial. The form of denial required in responding to conjunctive allegations in an adversary's pleading. 41 Am J1st Pl § 193.

disjunctive term. A term or expression in an alternative form. *Deihl v Perie (Pa)* 2 Miles 47, 49.

dislawyer. An ancient word meaning to disbar a lawyer.

dislocation. A condition of disarrangement. A bone out of joint.

dismes. Tenths; tithes.

dismiss. To discontinue; to order a cause, motion, or prosecution to be discontinued, quashed, or dismissed as finally adjudicated against the plaintiff. The term was not originally applied to common-law proceedings, but seems to have been borrowed by the law courts from proceedings in the court of chancery, wherein practice it is applied to the removal of a cause out of court, without any further hearing. It is applied to the removal or disposal of the cause itself, and not to the mere annulment of the writ. *Bosley v Bruner*, 24 Miss 457, 462.

See **dismissal**.

dismissal. An order for the termination of a case without a trial of any of its issues; a voluntary discontinuance by the plaintiff. 24 Am J2d Dism § 1. A judgment dismissing a cause as finally adjudicated against the plaintiff. The termination of a criminal case by the prosecuting attorney, the result of which is to free the defendant. *Brackenridge v State of Texas*, 27 Tex Crim 513, 11 SW 630. The discharge of an employee; a termination of employment in public or private capacity at the instance of the employer. *The Fort Gaines* (DC Md) 18 172d 413.

See **discontinuance; none prosequi; voluntary dismissal; want of prosecution**.

dismissal compensation. A payment made by an employer to an employee, in addition to wages or salary then owing by the employer to such employer, upon the termination of the employment, particularly where the employment is under a contract which entitles the employer to terminate the employment and discharge the employee at will. Anno: 147 ALR 151; 40 ALR2d 1044. Sometimes called separation wage; sometimes severance pay.

dismissal of action. See **dismissal**.

dismissal of appeal. The refusal by the appellate court to examine the merits of the cause—that is, a dismissal on a ground not involving the merits of the cause. 5 Am J2d A & E § 905.

dismissal without prejudice. A voluntary dismissal of an action or proceeding without an adjudication of the cause that would prevent the bringing of a new action upon the same cause. 24 Am J2d Dism §§ 6 et seq. An order of dismissal of an action reciting that it is without prejudice, the effect of which is to prevent the dismissal from operating as a bar to any new suit which the plaintiff might thereafter desire to bring on the same cause of action. *W. T. Raleigh Co. v Barnes*, 143 Miss 597, 600, 109 So 8.

See **two-dismissal rule**.

dismissal with prejudice. An order of dismissal granted on motion of the defendant made without reservation as to prejudice. 24 Am J2d Dism §§ 53 et seq. An adjudication on the merits of the case, a final disposition of the controversy which bars the right to bring or maintain an action on the same claim or cause of action. *Roden v Roden*, 29 Ariz 549, 243 P 413; *Pulley v Chicago, R. I. & P. Ry. Co.* 122 Kan 269, 251 P 1100.

dismissed. As the word is used in an appeal bond, the removal or disposal of the cause itself. 5 Am J2d A & E § 1031.

Where the entry "dismissed" is made as a minute order on motion of a plaintiff who wishes to abandon his action, such an entry is undistinguishable from an entry "dismissed" made by the court's order after a full examination of the evidence, and is a decision on the merits, while the other is a mere non pros. To avoid the bar presumptively arising from such a decree the entry of the motion to dismiss should be made on the record, or the entry should be made "without prejudice." *Brown v Brown*, 37 NH 536.

See **dismissed**.

dismissed agreed. An order "dismissed agreed" not only puts an end to the pending suit but is a bar to any subsequent suit on the same cause of action by the same parties. *Virginia Concrete Co. v Board of Supervisors*, 197 Va 821, 91 SE2d 415, 56 ALR 1283, except as the plaintiff obtain relief against such order on the theory that the dismissal is entirely the act of the parties and does not involve the exercise of judgment by the court. *McDonnell v Wasenmiller* (CA8 Neb) 74 F2d 320.

dismortgage. To free or redeem property from a mortgage.

disobedience. See **wilful disobedience.**

disorderly. Against or in violation of the peace, good order, morals, decency or safety of the public.

disorderly conduct. An act which tends to breach the peace or to disturb those people who hear or see it, or to endanger the morals, safety, or health of the community or of a class of persons or a family. 12 Am J2d Breach P § 30.

disorderly house. Any place where unlawful and illegal practices are habitually carried on. *Marvel v State*, 127 Ark 595, 193 SW 259, 5 ALR 1458. A place where acts are performed that tend to corrupt the morals of the community or to promote breaches of the peace, or a place kept for the purpose of public resort for thieves, drunkards, prostitutes or other idle and vicious people, without regard to whether there is any actual disturbance of the public peace and quiet. 24 Am J2d Disord H § 1.

See **house of ill fame; whorehouse.**

disorderly persons. Persons guilty of disorderly conduct.

See **disorderly conduct.**

disparagation. Same as **disparagement.**

disparage. To suffer or permit a disparagement. To discredit.

disparagement. Discredit; detraction. The wrong suffered by an infant ward at the hands of the guardian in providing an unequal or unsuitable marriage. As a survival of many of the abuses of feudal tenure, the guardian had and exercised the right of selling the ward in marriage for his own profit. See 2 Bl Comm 70, 71.

disparagement of property. Criticism which discredits the quality of merchandise or other property offered for sale. Anno: 57 ALR2d 848; 33 Am J1st L & S § 344.

disparagement of title. Words or conduct which bring or tend to bring in question the right or title of another to particular property. 33 Am J1st L & S § 344.

disparagium. Inequality in blood or station.

Disparata non debent jungi. Dissimilar matters ought not to be connected together.

dispark. To change the use or character of land from that of a park or game preserve.

[358]

dispatch. Verb: To send; to act promptly; to put an end to something; to kill. Noun: A message; speed; an article transmitted to a news agency.

See **customary despatch.**

dispatch company. A company engaged in the business of transporting goods through the agency and over the lines of other carriers selected by them, the company not owning or controlling any means of conveyance. 13 Am J2d Car § 50.

dispauper. To declare officially that a person who has been a pauper, is no longer a pauper; to deprive or deny a person the right of suing in forma pauperis.

dispensaries. State or municipal places where intoxicating liquors are sold at retail. 30 Am J Rev ed Intox L § 204. Places where medicines are prepared or dispensed.

dispensary act. A statute which forbids the manufacture or sale of intoxicating liquors as a beverage, within the limits of the state, by any private individual, and vests the right to manufacture and sell such liquor in the state exclusively, through certain designated officers and agents. *McCullough v Brown*, 41 SC 220, 19 SE 458.

Dispensatio est vulnus, quod vulnerat jus commune. A dispensation is a wound, because it wounds common right.

dispensation. Distribution; delivery. An exemption from certain duties or penalties imposed or prescribed by law.

dispensing of drug by physician. The actual delivery of a drug by the physician to the patient, from the physician's office supply, generally, though not always, excluding other actual delivery. Anno: 13 ALR 871.

dispensing power. The authority of an administrative agency to exempt from or relax a general prohibition or to relieve from an affirmative duty. 1 Am J2d Admin L § 141.

dispersonare. To scandalize.

displace. To take the place of; to remove; to remove a person from an office or position and put another person in his place. As applied to the act of a master of a ship in "displacing" an officer or seaman, to displace means to degrade or reduce to a lower station on the ship. *Potter v Smith*, 103 Mass 68, 69.

displaced person. A product of the ravages of war; a person left in a foreign country without a home because of a war.

displacement waves. Waves produced by a larger vessel proceeding at a high rate of speed, often causing injury to smaller craft. 48 Am J1st Ship § 280.

disposal. Arrangement; the transfer or alienation of property, even by gift, trade, or barter.
See **disposition**.

disposal plants. Places where the carcasses of animals are rendered into usable products; places where sewage is treated and reduced to the point where it is not harmful or annoying to the senses. A place provided by a municipality for receiving and disposing of garbage, such disposal being by incineration or other method of treatment. A municipal use within the meaning of a zoning ordinance. *Lees v Sampson Land Co.* 372 Pa 126, 92 A2d 692, 40 ALR2d 1171.

dispose. To arrange; to put in place. To alienate, sell, or transfer. *United States v Hacker* (DC Cal) 73 F 292, 294; *Hubbell v Hubbell*, 135 Iowa 637, 113 N W 512. To grant; to convey, even by way of barter or exchange. *Phelps v Harris* (US) 11 Otto 370, 380, 25 L Ed 855, 859. As the word appears in a statute providing a ground for attachment, it has a broader significance than "transfer," but does not include the mere secretion of property. 6 Am J2d Attach § 237.

disposing mind. A test of testamentary capacity, being a mind capable of knowing and understanding the disposition to be made of one's property by will and the persons upon whom bounty is to be bestowed, notwithstanding some element of mental unsoundness. *Freeman v Easley*, 117 Ill 317, 321. The mind of a testator who is fully capable of comprehending the testamentary disposition which his will has made of his property. *Yardley v Cuthbertson*, 108 Pa 395.

See **sound and disposing mind and memory**.

disposition. Frame of mind; nature or temperament. An arrangement. A transfer of property. The power of disposal.

See **fraudulent disposition of property; testamentary disposition**.

dispositive mind. Same as **disposing mind**.

dispossess. To oust; to put out of possession.

dispossession. Changing from the possession of one person to that of another; ouster; a wrong or injury that carries with it the amotion of possession thereby getting the wrongdoer into the actual occupation of the land or hereditament, and obliging him who has a right to seek his legal remedy in order to gain possession, and damages for the injuries he has sustained. See 3 Bl Comm 167.

dispossess proceeding. A summary proceeding brought to oust from possession a tenant who is in default.

See **ejectment; forcible entry and detainer**.

dispossess warrant. A warrant issued by the court in dispossess proceedings for the ouster of the tenant.

See **writ of possession**.

disprison. To liberate from prison.

disproof. Proof which tends to rebut or negative other evidence.

disproportionate. Out of proportion, as an award of damages bearing no reasonable proportion to the injury sustained. 22 Am J2d Damg § 366.

disprove. To refute; to negate.

disputable. Rebuttable; capable of being rebutted or refuted.

disputable presumption. A rebuttable presumption. A presumption which can be removed in no other way than by evidence sufficiently strong to rebut it. Joyner v South Carolina Railway Co. 26 SC 49, 55, 1 SE 52.

disputatio fori. (Civil law.) An argument before the court.

dispute. A controversy. An allegation of fact by one person denied by another person, each acting with some show of reason. Knight's Appeal, 19 Pa 493, 494.

See **labor dispute; matter in dispute**.

disputed claim. As the subject of an accord and satisfaction, a dispute as to the amount of the sum

[359]

actually due, as to whether anything is due, or as to the construction of the terms of the contract between the parties, which is bona fide, honest, and based upon a reasonably tenable or plausible ground. 1 Am J2d Accord § 27.

disputes clause. The provision in a contract for the construction of a public improvement that a dispute concerning a question of fact shall be conclusively settled by an administrative decision. Anno: 94 L Ed 263; 96 L Ed 119.

disqualification. Want of qualification, especially for a public office or for jury duty. It may be from want of an abstract qualification, such as a requirement for education, or from an element such as interest in the matter to be handled.

See **ineligible**.

disqualified judge. A judge disqualified to act in a particular case because of personal interest in the subject matter of the suit or because he is within a certain degree of relationship to one of the parties. 30A Am J Rev ed Judges § 89.

disqualified juror. A juror subject to challenge for want of a requisite qualification such as literacy, character, mental disability, prejudice, bias, relationship to a party, or interest in the suit. 31 Am J Rev ed Jur §§ 157 et seq.

disqualified witness. A witness incompetent to testify because of his mental condition, want of sensibility to the obligation of an oath, the privileged nature of the communication or other source of his knowledge of the facts, or interest in the result of the suit in a case where he is called to testify on his own behalf, in an action in which the adverse party is a personal representative of a decedent or the guardian or committee of an incompetent, concerning a transaction with the person since deceased or become incompetent. 58 Am J1st Witn §§ 102 et seq.

disqualify. To incapacitate; to disable; to divest or deprive of qualifications. Matter of Maguire, 57 Cal 604.

See **disqualification**.

disrationare. To exonerate one's self; to establish innocence.

disregard. To take no notice of; to give no credence to, as in following an instruction by the court to the jury to disregard certain testimony stricken from the record. Anno: 4 ALR2d 1088.

disregarding corporate entity. Treating a corporation and the individual or individuals owning all its stock as identical; graphically stated, piercing the veil of the corporate entity. Anno: 1 ALR 610; 34 ALR 597.

disruptive discharge. See **brush discharge**.

dissasina. Same as **disseisin**.

dissection. The severance of a dead body into parts, sometimes very minute parts, for study of the anatomical structure, or the detection of infection or disease.

disseisee. A person who has been disseised or ousted.

disseisin. An ouster or wrongful dispossession of one in possession of real property who is seized of a freehold therein. 3 Am J2d Adv P § 52. More broadly defined as the wrongful dispossession or exclusion of a person entitled to possession. 25 Am J2d Eject § 47.

Disseisinam satisfacit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. A person who commits a disseisin is one who does not permit the possessor to enjoy his property or who renders his enjoyment less comfortable, although he does not expel him altogether.

disseisin by construction of law. Acts committed without force, in themselves equivocal, and not necessarily amounting to an entire and immediate ouster of the freehold, but which the owner may, if he pleases, treat as usurpations of his freehold for the purpose of vindicating his title by an action at law. 25 Am J2d Eject § 47.

disseisin by election. A legal fiction under which an owner might elect to admit disseisin and consider himself disseised for the purpose of securing or availing himself of the remedy by action of novel disseisin against an adverse claimant; but if he did not elect to consider himself disseised, the freehold was not divested, but still continued in him. *Varick v Jackson* (NY) 2 Wend 166.

See **disseisin by construction of law.**

disseisin in fact. An actual ouster or dispossession of the owner of the freehold which deprives him even of constructive possession, leaving him a mere right of entry or of property. *Varick v Jackson* (NY) 2 Wend 166.

disseisor. A person who effects or commits a disseisin.

disseissoress. A female who effects or commits a disseisin.

disseminate. To spread information. The word creates the same picture as broadcast by radio. *Norman v Century Athletic Club*, 193 Md 584, 69 A2d 466, 15 ALR2d 777.

dissension. A disagreement, particularly in religious societies, leading to heated debate, even angry words, strife, discord, quarrels, and sometimes a disunion or breaking apart. *McKinney v Griggs*, 68 Ky (5 Bush) 401, 417.

dissent. To disagree with another or with others; to render a minority opinion in the decision of a case. Disagreement of an individual juror with the verdict, announced on the polling of the jury. 21 Am J2d Crim L § 371.

dissenting stockholders. A minority who oppose the action taken by the majority.

dissignare. To break a seal.

Dissimilium dissimilis est ratio. The rule as to matters which are dissimilar; dissimilar.

Dissimulatione tollitur injuria. An injury is extinguished by the condonation of the person injured.

dissipate. To squander; to waste; to scatter completely; to disperse and cause to disappear-used especially of the dispersion of things that can never again be collected or restored. *Hughes v Carr*, 101 Wash 109, 172 P 224. To over-indulge in pleasure.

dissipation of funds. The free spending by a debtor in failing circumstances without regard for his obligations to creditors; for all practical purposes, a destruction of property within the meaning of opposition to discharge in bankruptcy. 9 Am J2d Bankr § 711.

[360]

dissolution. The separation of a thing into its component parts; a breaking up.

dissolution bond. A bond given by the defendant in an action in which property has been attached, for the purpose of obtaining an entire dissolution of the attachment, the condition of the bond being that the defendant will perform or satisfy whatever judgment is obtained against him in the action. 6 Am J2d Attach § 523.

dissolution of association. The winding up of the affairs of a voluntary association, including the payment of claims against the organization and the distribution of remaining assets, if there be such assets, among the members. 6 Am J2d Asso & C §§ 59 et seq.

dissolution of attachment or garnishment. The termination of an attachment or garnishment upon the happening of certain events or contingencies after the levy, upon the entry or receipt of security, or as the result of some act or proceeding taken for the express purpose of defeating or nullifying the attachment or garnishment. There is a distinction between the "dissolution" of an attachment and the quashing of a levy; in a proper case a levy may be set aside and the writ of attachment stand. 6 Am J2d Attach § 408.

dissolution of corporation. The termination of the existence of the corporation and its utter extinction and obliteration as an entity or body. 19 Am J2d Corp § 1586.

See **de facto dissolution; winding up.**

dissolution of injunction. The termination or vacation of an injunction upon cause shown for such relief. 28 Am J Rev ed Inj § 306.

dissolution of marriage. See **annulment of marriage; divorce a vinculo matrimonii.**

dissolution of partnership. That change in the partnership relation which ultimately culminates in its termination. The change of the relation of partners caused by any partner's ceasing to be associated in the carrying on of the business. 48 Am J1st Partn § 233. Dissolution is not in itself a termination of the partnership or of all the rights and powers of partners, for many of these persist during the winding-up process which follows dissolution. Under statutory provision distinguishing between dissolution of a partnership and winding-up the business, the conduct of a partner inconsistent with the continuance of a partnership results in the dissolution of the partnership in spite of the fact that liquidation is not completed or some appearances of the partnership continue. *Fooshe v Sunshine*, 96 Cal App 2d 336, 215 P2d 66, 16 ALR2d 1142.

dissolve. To effect a dissolution; as to dissolve a partnership or a corporation.

dissuade. To persuade one not to follow a certain course or perform a certain act.

distances. Indications in describing the boundaries of a tract of real estate.

See **assured clear distance; courses; striking distance.**

distemper. A contagious disease affecting animals; an emotional state.

distillation. See **distilling.**

distiller. A person whose occupation is to extract spirits by distillation. *Johnson v State*, 44 Ala 414, 416.

distillery. A place or building where alcoholic liquors are distilled or manufactured. The term does not, as ordinarily used, apply to every building where the process of distillation is used, such as a paraffin oil factory. *Atlantic Dock Co. v Libby*, 45 NY 499, 502.

distilling. A refinement of a liquid by the process of heating it to the boiling point, collecting the vapor, and cooling the vapor, thereby reducing it to a liquid of greater strength and purity than the original; a process in the manufacture of alcoholic beverages. The application of heat to liquid by which means it is converted into steam and afterward converted into liquid, the steam being run through a coil which is kept cool, either by water or other process, cool enough so as to condense the steam into liquid. *Whisnant v State*, 39 Okla Crim 214, 264 P 837, 839; *State v Scott*, 119 Or 446, 249 P 817.

distinct. Clear to the senses or mind; easily perceived or understood; plain; unmistakable. *Hill v Norton*, 74 W Va 428, 438, 82 SE 363.

distincte et aperte. Distinctly and openly.

distinctively. Characteristically, or peculiarly; not necessarily exclusively. *Western Union Tel. Co. v Green*, 153 Tenn 59, 281 SW 778, 48 ALR 301, 314.

distinctive name. As defined in the departmental regulations for the enforcement of the provisions of the Food and Drugs Act of 1906, the term means a trade, arbitrary, or fancy name which clearly distinguishes a food product, mixture, or compound from any other food product, mixture, or compound. *United States v Forty Barrels & Twenty Kegs of Coca Cola*, 241 US 265, 286, 60 L Ed 995, 1005, 36 S Ct 573. The later statutes in this field do not contain the "distinctive name" provisions of the former act. 35 Am J2d Food § 45.

distinct offenses. Distinct violations of law, even though they may grow out of the same transaction. The test of identity of offenses is whether the same evidence is required to sustain them; if not, then the fact that both charges relate to and grow out of one transaction does not make a single offense where two are defined by the statutes. *Morgan v Devine*, 237 US 632, 59 L Ed 1153, 35 S Ct 712.

Distinguenda sunt tempora; aliud est facere, aliud perficere. Times must be distinguished; it is one thing to act and another to finish. The maxim has been applied as asserting the doctrine that the law should be construed in a manner to some extent affected by public sentiment. *Blocs v Tobey*, 19 Mass 320, 327.

Distinguenda sunt tempora; distingue tempora, et concordabis leges. Times must be distinguished; distinguish times and you will reconcile laws.

Distingue tempora, et concordabis leges. Distinguish times and you will reconcile laws.

distinguishing mark. Birthmark, scar, or other mark of identification; such a mark on a ballot, whether letter, figure, character, cut corner, or mere crease, as shows an intention on the part of the voter to distinguish his particular ballot from others of its class.

A distinguishing mark invalidates a ballot, since

[361]

it furnishes a means of evading the law as to the secrecy of the ballot. 26 Am J2d Elect § 265.

distracted. Diverted; worried, sometimes to the point of derangement.

distractio. (Civil law.) A creditor's sale of hypothecated property; a pledgee's sale of a pledge.

distrahere. To withdraw; to sell at public auction; to put up for sale.

distrain. To seize the animals or goods of another, as to take up or withhold the cattle or goods of a tenant for the non-payment of rent, or other duties due the landlord. 32 Am J1st L & T § 613. To seize and impound a trespassing animal. 4 Am J2d Am § 55. A "distrain" involves the actual seizure of the property distrained. No distraint is shown by a mere sale of a tax lien on property without disturbance of the debtor's property ownership. *Kroell v New York Ambassador* (CA2 NY) 108 F2d 294.

See **distress**.

distress. The act of distraining the goods or cattle of another; the taking of possession of a personal chattel out of the possession of a wrongdoer into that of the party injured, to procure satisfaction for the wrong done. 3 Bl Comm 6. The common-law writ under which a distress was effected. *Barnet v Ihrie* (Pa) 1 Rawle 44.

See **distress damage feasant; distress for rent.**

distress damage feasant. A landowner's seizure and impounding of animals found trespassing and doing damage on his land, and holding them until compensation for the damage sustained is made. 4 Am J2d Am § 55.

distress for rent. A common-law remedy for the collection of rent in arrears which permits the landlord to go upon the demised premises and seize anything he may find there as security for rent in arrears, and hold it without sale until the rental is paid. In a number of jurisdictions, distress for rent either has been expressly abolished by statute or impliedly abolished by statutes providing other remedies for the recovery of rent. In most if not all of the states in which the remedy still exists, its exercise is regulated by statute. 32 Am J1st L & T § 613.

distress infinite. A series of distresses made one after another until satisfaction for the wrong done has been made by the owner of the distrained property. A distress of this nature has no bounds with regard to its quantity and may be repeated from time to time until the stubbornness of the party is conquered. It is used sometimes for extraordinary purposes such as summoning jurors. See 3 Bl Comm 231.

distress warrant. A term of variable meaning. In some jurisdictions, a judicial writ in the nature of an execution. *Inhabitants of Baileyville v Lowell*, 20 Me 178, 182. In other jurisdictions, a writ within a requirement that all writs run in the name of the state, but not judicial process within the requirement of having such process returnable before a court or justice of the peace. *State ex rel. Myers v Hodge*, 129 W Va 820, 42 SE2d 23. In another jurisdiction, a mere power of attorney by which a landlord delegates the exercise of his right of distraint to an agent. *Re Koizim*, (DC NJ) 52 F Supp 357. In some jurisdictions, a remedy for the collection of taxes. 28 Am J Rev ed Inher T § 455.

distributable. Divisible.

See **allocable.**

distribute. To divide; to apportion; to make distribution of the property of a decedent's estate to the persons entitled thereto.

See **pro-rate.**

distributees. Persons who are entitled, under the statute of distributions, to the personal estate of one who has died intestate. *Henry v Henry*, 31 NC (9 Ired L) 278, 279. In the nontechnical sense, all persons in whom the law may vest any part of the property of a decedent. *Terral v Terral*, 212 Ark 221, 205 SW2d 198, 1 ALR2d 1092.

See **heirs; next of kin.**

distributing literature. A means of advertising and promoting a cause. *Pierce v United States*, 252 US 239, 253, 64 L Ed 542, 549, 40 S Ct 205.

distribution. Division. The transmission of personal property of a decedent by the passing of title to the personal representative for the payment of decedent's debts and claims against the estate, and finally to distribute the remainder to the persons entitled by the law of intestate succession. 23 Am J2d Desc & D § 1. *Swift & Co. v Johnson* (CA8 Minn) 138 F 867. Sometimes having reference to real as well as personal property. *Foster v Clifford*, 87 Ohio St 294, 101 NE 269. Sometimes applied to the disposal of the estate of a testate decedent by the executor. *Johnson v Knights of Honor*, 53 Ark 255, 13 SW 794.

See **decree of final distribution; descent; distributees; distributive share; establishment of heirship; final distribution; hotchpot; statute of distribution.**

distribution of capital. The distribution of capital assets of a corporation to the stockholders, thereby depriving creditors of property which is primarily liable to the payment of their claims. *Davis v Hemming* 101 Conn 713, 127 A 514 39 ALR 133. The term does not include an issue of new stock. *Trefry v Putnam*, 227 Mass 522, 116 NE 904.

distribution of powers. See **division of powers**.

distribution policy. See **deferred dividend policy**.

distributive finding of the issue. A finding of facts for both parties, partly for the plaintiff and partly for the defendant.

distributive justice. A concept exemplified by the maxim—"Unto each shall be rendered that which is his." A guaranty of the due process clause.

Due process of law, in spite of the absolutism of continental governments, is not alien to that code which survived the Roman Empire as the foundation of modern civilization in Europe, and which has given us that fundamental maxim of distributive justice. *Hurtado v California*, 110 US 516, 531, 28 L Ed 232, 237, 4 S Ct 111, 292.

distributive share. The share in the personal estate of an intestate, after the payment of his debts and claims against the estate, to which a distributee or heir is entitled. 22 Am J2d Desc & D § 22.

The term has also been applied with less precision to the share of a legatee, sometimes to a share in the real estate left by an intestate, even to the share of a devisee. 31 Am J2d Ex & Ad § 550. Strictly speaking, a distributee is not entitled to a share of the specific rights and credits, goods, and chattels of the decedent in the hands of his personal representative, but only to a share in the fund produced by administering them. *Wright v Holmes*, 100 Me 508, 62 A 507.

[362]

district. A word of variable meaning in the law. A portion of the state with limits set by law for governmental purposes. *Chicago & Northwestern Railway Co. v Oconto*, 50 Wis 189, 6 NW 607. A judicial district. *State ex rel. Brockmeier v Ely*, 16 ND 569, 113 NW 711. The area or vicinity of an event. *State ex rel. Funck v McCarty*, 52 Ohio St 363, 39 NE 1041.

district attorneys. Public officers elected or appointed, as provided in the several state constitutions or by statute, to conduct suits, generally criminal, on behalf of the state in their respective districts. They are sworn ministers of justice, quasi judicial officers representing the commonwealth. 42 Am J1st Pub Of § 2.

See **United States District Attorney**.

district courts. Usually, courts of record having general jurisdiction. In some jurisdictions, constitutional courts. 20 Am J2d Cts § 17. Courts of limited jurisdiction in some states.

district courts of the United States. See **United States District Courts**.

district director of internal revenue. An officer in the field organization of the Internal Revenue Service. 34 Am J2d Fed Tax 11 9261.

districtio. A distress. See 3 Bl Comm 6.

District of Columbia. The seat of government of the United States, having an area of 69 square miles, situated on the Potomac River, on the border of Maryland opposite Virginia, and subject to the power of Congress to exercise exclusive legislation in reference thereto. 49 Am J1st States § 122. It occupies a unique position, being neither state nor organized territory in the usual sense of such terms. *Hepburn v Ellzey (US)* 2 Cranch 445, 2 L Ed 332. But it is a state as the word is used in reference to the making of treaties with foreign powers. *Geofroy v Riggs*, 133 US 258, 33 L Ed 642, 10 S Ct 295.

districts. See **district.**

district school. A public school open to all children of school age. In some cities such schools are denominated "ward schools." *Maxey v Oshkosh*, 144 Wis 238, 128 NW 899. Many district schools have been eliminated of recent years by the creation and operation of centralized or consolidated schools.

districtus. A district; a distress.

distringas. A writ of distress; a writ to enforce the attendance of jurors by distress of their goods or seizure of their persons; a proceeding in equity to enforce the obedience of a corporation to a summons; a form of execution. "Whether the writ of execution is called a *distringas* or an *habere facias seisinam*, is of little consequence, provided it is calculated to carry the judgment into effect." *Barnet v Ihrie* (Pa) 1 Rawle 44, 51.

distringas juratores. A writ to enforce the attendance of jurors at court by the distress of their goods or by the seizure of their persons. See 3 Bl Comm 355.

distringas nuper vice comitem. A writ of distress which lay against a man who had been sheriff for nonfeasance while in office.

distringas vice comitem. A writ of distress which lay against a sheriff who neglected to execute a writ.

distringere. To distrain.

disturb. To throw into disorder or confusion; to derange; to interrupt the settled state of; to excite from a state of rest. *Watkins v Kaolin Mfg. Co.* 131 NC 536, 42 SE 983.

disturbance. A wrong done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it. See 3 Bl Comm 236.

disturbance of common. The incommoding or diminishing of a right of common. See 3 Bl Comm 237.

disturbance of franchises. Such a disturbance as happens when a man has the franchise of holding a court-leet, of keeping a fair or market, of free-warren, of taking toll, of seising waifs or estrays, or any other species of franchise, and he is disturbed or incommoded in its lawful exercise. See 3 Bl Comm 236.

disturbance of patronage. A hindrance or obstruction of a patron to present his clerk to a benefice. This disturbance differed from usurpation which was an absolute dispossession of the patron and happened when a stranger without right presented a clerk who was forthwith admitted and instituted. See 3 Bl Comm 242.

disturbance of public worship. See **disturbance of worship.**

disturbance of repose. A violation of sepulture in unauthorized exhumation an removal of remains or the desecration of a grave, such being an actionable wrong and a criminal act as well. 22 Am J2d Dead B § 18.

disturbance of tenure. The breaking of the relation which subsisted between a lord and his tenant. To have an estate well tenanted was an advantage to every landlord and the driving away of a tenant from his estate was a considerable injury for the redress of which an action on the case lay at common law. See 3 Bl Comm 242.

disturbance of the peace. A breach of peace. 12 Am J2d Breach P § 4.

See **breach of peace; riot.**

disturbance of ways. A species of disturbance which happened chiefly when a person who had a right of way over the land of another, by grant or prescription, was obstructed by enclosures or other obstacles, or by ploughing across it, whereby he could not use the way at all, or at least in a less convenient manner than he might have done. See 3 Bl Comm 241.

disturbance of worship. The common-law offense of disturbance of persons gathered for the purpose of religious worship, extended by statute to the protection of all lawful meetings against the wilful and tumultuous conduct of persons attempting to make a disturbance. 24 Am J2d Disturb M § 1. Any act which is disorderly and subversive of the solemnity and decorum due to the occasion and the place, which is committed while a congregation is assembled for public worship; as where a member of the congregation arose from his seat and interrogated the minister, while the latter was taking up the collection, as to remarks made in his sermon. *Wall v Lee*, 34 NY 141, 149.

disturber. A person who commits a disturbance.

disturbing. See **disturbing meeting**; and see also terms and expressions beginning **disturbance**.

[363]

disturbing meeting. Wilful and tumultuous conduct of persons making, or attempting to make, a disturbance at a religious meeting or other lawful assembly. *People v Malone*, 156 App Div 10, 141 NYS 149. Any conduct which is contrary to the usages of the particular sort of meeting and class of persons assembled and interferes with its due progress or annoys the assembly in whole or in part is a disturbance. It may consist of a physical act, a verbal expression, an indecent gesture, or generally anything violative of the character and purpose of the particular meeting. 24 Am J2d Disturb M § 5.

disuse. See **nonuser**.

diswarren. To change the use or character of land from that of a warren.

ditch. A hollow space in the ground, either natural or artificial, where water is collected or drained away. *Barton v Drainage Dist.* 174 Ark 173, 294 SW 418. A way or course of drainage of surface water. Anno: 81 ALR 263.

ditch company. See **irrigation companies**.

dites ouster. You say over again,—a formal expression used in a judgment of respondeat ouster. See 3 Bl Comm 303.

dittay. The charge of crime contained in an indictment.

ditto mark. The mark ", used to indicate that the word in a line, under which the mark appears, is to be considered duplicated in the line below.

divers. Different, various, sundry, several.

diverse. Different; varied.

diverse citizenship. See **diversity of citizenship**.

diverse considerations. Not sufficient, at common law, as an allegation of a money consideration. *Hartley v McAnulty* (Pa) 4 Yeates 95.

diversion of goods. The right and act of a shipper by common carrier in changing the destination of the shipment at any intermediate point through which the goods pass before reaching their original destination. 13 Am J2d Car § 393.

diversion of stream. Changing the course or channel of a natural stream. 56 Am J1st War § 14.

See **diversion of water.**

diversion of water. The extraction of water from a stream or other body of water for the purpose of making use of it, such constituting an actionable wrong to a lower riparian owner where it is not limited to a taking for a reasonable use, causes a material diminution of the stream, and materially interferes with the rights of the lower riparian owner. *Parker v Griswold*, 17 Conn 288, 299.

See **diversion of stream.**

diversis diebus et vicibus. At divers days and times.

diversity cases. Actions properly before federal courts because of diversity of citizenship of the parties. 20 Am J2d Cts § 13.

See **diversity of citizenship.**

diversity jurisdiction. The jurisdiction of a federal court arising from diversity of citizenship of the parties. 20 Am J2d Cts § 13.

See **diversity of citizenship.**

diversity of citizenship. A ground for invoking the original jurisdiction of a Federal District Court, the basis of jurisdiction on such ground being the existence of an actual and substantial controversy between citizens of different states. There is a diversity of citizenship, in a case involving a plurality of parties, where all the parties on one side of a controversy are citizens of different states from all those on the other side. *Indianapolis v Chase Nat. Bank*, 314 US 63, 86 L Ed 569, 62 S Ct 355. The same principle applies in determining diversity of citizenship for the purpose of removing a case from a state court to a federal court. *Gainesville v Brown-Crummer Invest. Co.* 277 US 54, 72 L Ed 781, 48 S Ct 454.

diversity of person. A plea interposed after a judgment of conviction denying the identity of the prisoner with that of the convicted defendant.

diverso intuitu. With a different purpose or motive. Where the original consideration flows from A, not solely upon the promise of B or C, but upon the promise of both, *diverso intuitu*, each becomes liable to A, not upon a joint, but a several original undertaking. *D'Wolf v Rabaud* (US) 1 Pet 476, 500, 7 L Ed 227, 237.

diversorium. A place of entertainment; an inn.

divers persons. At least three or more persons. *State v Lustig*, 13 NJ Super 149, 80 A2d 309.

dives costs. A rich man's costs, ordinary costs, as opposed to costs taxed to a defendant who appears in *forma pauperis*.

divest. To deprive or cause the loss of a right or title.

divestiture. A being divested, as by a surrender of a right or title.

divestive fact. A fact, the existence of which divests or modifies a right.

divide. The severance or partition into two equal parts, except as the word may be qualified by other terms. *Groves v Jones*, 252 Mich 446, 233 NW 375. In common usage, to sever into two parts; to cut or part into several or many pieces. *Graves v White*, 43 Colo 131, 134.

divide and pay over rule. The rule that where the only words of gift in a testamentary disposition of property are found in the direction to divide or pay at a time subsequent to the death of the testator, time is to be taken as of the essence of the gift and the interest is future and contingent, rather than immediate and vested. See *Lytle v Guilliams*, 241 Iowa 523, 41 NW2d 668, 16 ALR2d 1377.

divided court. A division of the judges or justices on the decision to be rendered. Division does not affect the character of the case as a precedent, unless the court is equally divided, in which case, the doctrine of stare decisis has no application. 20 Am J2d Cts § 195.

divided custody. An alternating custody of a child between divorced parents. 24 Am J2d Div & S § 799.

divided damages rule. The rule in admiralty that where two parties are jointly responsible for a tort to a third, each is primarily liable only for half of the damages. 2 Am J2d Adm § 212.

divided fractional part. Used in the granting clause of a deed, the term indicates an intention to convey in severalty. 23 Am J2d Deeds § 196.

divided highway. A highway in which traffic moving in one direction is separated from traffic moving in

[364]

the other direction by a raised portion of a low wall, or an open space.

divided reputation. A paradoxical expression for diversity of evidence as to general reputation. *Jackson v Jackson*, 82 Md 17, 33 A 317.

Divide et impera, cum radix et vertex imperil in obedientium consensu rata sunt. Divide and rule, for the root and pinnacle of empire are rated in the consent of the obedient.

dividend. A gain or profit. *Hellmich v Hellman* (CA8 Me) 18 F2d 239. A division into shares; one of such shares. A payment made by a corporation to its stockholders out of surplus earnings and under authority of a resolution by the board of directors which declares the policy of a paying a portion or all of such surplus to the stockholders. *Lamb v Lehmann*, 110 Ohio St 59, 143 NE 276, 42 ALR 437. A disbursement by a business trust to its members. A payment made to general creditors in a proceeding in bankruptcy; sometimes used in a broader significance as including a payment made in satisfaction of priority debts. 9 Am J2d Bankr § 1262. A payment made to creditors in insolvency proceedings.

Used in the limitation of a life estate and a remainder in connection with a provision for the disposition of extraordinary dividends and distributions as between life tenant and remainder, the term "dividend" is equivalent to "income." 33 Am J1st Life Est § 378.

See **cash dividend; cumulative dividends; dividend additions; dividend in scrip; dividend on insurance policy; dividend warrant; guaranteed dividends; non-cumulative dividends; stock dividend.**

dividends. An indenture; one of the two parts of an indenture.

dividend addition. A term usually applied to paid-up insurance purchased by a dividend, but at other times understood to mean dividends. 29 Am J1st Ins § 648.

See **paid-up addition**.

dividend declared. See **declaration of dividend**.

dividend in kind. A corporate dividend in any medium other than money. Commissioner v First State Bank (CA5) 168 F2d 1004, 7 ALR2d 738.

dividend in liquidation. A payment made to creditors in a bankruptcy proceeding. 9 Am J2d Bankr § 1262. A payment made to creditors in insolvency proceedings. A distribution to stockholders in a corporation or members of a firm or business enterprise of the fund remaining after the liquidation of the business and the payment of creditors. Hellman v Helvering, 63 App DC 18, 68 F2d 763.

dividend in scrip. A certificate issued by a corporation to its stockholder evidencing the holder's title to the same extent of interest in the property and franchise as a stock dividend, except that the corporation has the right to pay the dividend out of future earnings, and except also that the scrip dividend confers no right to vote. Bailey v New York Cent. & Hudson River Railroad Co. (US) 22 Wall 604, 22 L Ed 840.

dividend off. A sale of a corporate stock not carrying to the purchaser a dividend previously declared; same as **ex dividend**. 19 Am J2d Corp § 892.

dividend on. A characterization of a sale of corporate stock carrying a dividend previously declared. 19 Am J2d Corp § 892.

dividend on insurance policy. A payment made by an insurance company to policyholders from the surplus of the company, either in cash, by way of credit on the premium, or by applying it to the purchase of paid-up insurance called a dividend addition. 29 Am J Rev ed Ins § 110.

See **dividend addition**.

dividend policy. A most common form of life insurance policy issued under a plan whereby each policyholder pays annually in advance a fixed sum which, when added to like payments by others, probably will create a fund larger than necessary to meet all maturing policies and estimated expenses. At the end of each year the actual insurance costs and expenses incurred are ascertained. The difference between their sums and the total of advance payments and other income, then becomes the "overpayment" or surplus fund for immediate pro rata distribution among policyholders as dividends or for such future disposition as the contracts provide. An "annual dividend" policyholder receives his proportionate part of this fund each year in cash, as a credit upon or abatement of his next premium, or in the form of paid-up insurance purchased by the dividend. New York Life Ins. Co. v Edwards, 271 US 109, 115, 70 L Ed 859, 861, 46 S Ct 436.

dividend warrant. A warrant or order on a corporation treasury for the amount of a stockholder's dividend.

divinare. To divine; to guess; to prophesy.

Divinatio non interpretatio est, quae omnino recedit a literis. It is guesswork and not interpretation which wholly departs from the literal.

divine. Pertaining to God.

divine law. A law which has God for its author, as distinguished from man-made law. The definition is sometimes refined by recognizing two types, natural law and positive or revealed law. *Borden v State*, 11 Ark 519.

divine right of kings. The old theory that the king derived his power from God.

There has never been any sensible reason for asserting that the title to the throne of England was by divine right. 1 Bl Comm 191.

divine service. Religious worship.

See **tenure by divine service.**

divining-rod. A rod or twig held in the hand and supposed to indicate the location of subterranean water by being pulled down by a mysterious force at the farther end.

divisa. A boundary.

Divisibilis est semper divisibilis. That which is divisible is always divisible.

divisibility of statute. See **severability of statute.**

divisible. Susceptible of being divided or separated into component parts.

divisible contract. A contract of which a part is susceptible of separate or independent treatment with respect to some particular right or remedy. 46 Am

[365]

J1st Sales § 140. A contract, the performance of which is divided into different groups, each set embracing performances which are the agreed exchange for each other; in other words, on performance by one side of one of the successive divisions, the other party becomes liable for his performance of that division. 17 Am J2d Contr § 324; 46 Am J1st Sales § 140. A contract enforceable as to a part which is valid, although another part is invalid and unenforceable. 17 Am J2d Contr § 230. An insurance policy under which there may be recovery for the loss of one of several items covered by the policy, notwithstanding a breach of warranty or condition precludes recovery as to another item or items. 29 Am J Rev ed Ins § 283.

See **severability of contract.**

divisible divorce. The phrase used in reference to a decree of divorce which is valid insofar as it grants a divorce, but may be invalid insofar as it purports to adjudicate separable personal rights, because of want of personal service of process within the state. *Estin v Estin*, 334 US 541, 92 L Ed 1561, 68 S Ct 1213, 1 ALR2d 1412. The "divisible divorce" doctrine is a recognition of the fact that dissolution of the marital status by a divorce may or may not extinguish all the obligations of a husband originally created as incidents thereof, including the duty to support the former wife. *Pawley v Pawley* (Fla) 46 So 2d 464, 28 ALR2d 1358. Under the "divisible divorce" concept, a divorce decree may be completely effective to dissolve a marriage and yet be completely ineffective to alter certain legal and economic incidents of that marriage. *Lynn v Lynn*, 302 NY 193, 97 NE2d 748, 28 ALR2d 1335.

divisible judgment. See **severable judgment.**

divisible statute. See **severability of statute.**

divisim. Severally; separately.

divisim et conjunctim. Severally and jointly.

division. Separation. The ascertainment of a legislative vote by separating the members. A dissension or schism between groups of members of the congregation of a church, causing it to split into factions, each faction claiming to be the true body or congregation of the church. *Poynter v Phelps*, 129 Ky 381, 111 SW 699.

See **benefit of division; political division.**

divisional court. An English court composed of two or more judges of the high court of justice and sitting only in special cases.

division fence. See **partition fence.**

division of administrative body. Organization of a board or commission by panels or divisions, each of which shall have and exercise all the jurisdiction and powers of the board or commission. 2 Am J2d Admin L § 196.

division of commission. See **splitting commission.**

division of fees. A permissible practice as between attorneys at law representing a client jointly, the division being equal in the absence of a contract to the contrary. 7 Am J2d Attys § 260. A reprehensible practice, which is a ground for disbarment or suspension of license, where performed in consideration of the solicitation of business by the person with whom the fee is split. *Utz v State Bar of California*, 21 Cal 2d 100, 150, 130 P2d 377; *Re Tuthill*, 256 App Div 539 10 NYS2d 643, app den 256 App Div 1059 11 NYS2d 842. Also a reprehensible practice, known as fee-splitting, where it consists in the conduct of an employment agency in charging a fee to the worker and paying a part of it to the employer; a practice akin to job-selling by foremen and superintendents. *Ribnik v McBride*, 277 US 350, 72 L Ed 913.

division of opinion. The disagreement in opinion of the judges of a court when they do not concur in rendering their decisions.

See **divided court.**

division of powers. The system under the constitution of the United States wherein the powers of government are divided between the federal and the state governments. 16 Am J2d Const L § 198.

See **separation of powers.**

division wall. A wall on the line or abutting the line between the property of adjoining landowners. Such may become a party wall by agreement or prescription.

See **party wall.**

divisum imperium. A divided authority; the concurrent jurisdiction of different tribunals over the same subject matter. See 1 Bl Comm 110.

divorce. A dissolution of the marriage relation between husband and wife, the term, standing alone, importing a complete severance of the tie by which the parties were united. *Miller v Miller*, 33 Cal 353.

A divorce decree is a judgment. *Jelin v Jelm*, 155 Ohio St 226, 98 NE2d 401, 22 ALR2d 1300.

See **absolute divorce; alimony; collusive divorce; discretionary divorce; divorce a mensa et thorn; divorce a vinculo matrimonii; divorced; divorcee; foreign divorce; Indian divorce; interlocutory decree; judicial divorce; judicial separation; legislative divorce; limited divorce; separate maintenance; separation; separation agreement.**

divorce'. A divorced man.

divorce a mensa et thoro. A judicial decree which terminates the obligation and right of cohabitation but does not affect the status of the parties as married persons or dissolve the marriage. 24 Am J2d Div & S § 1. A limited, partial or qualified divorce which suspends the marriage relation and modifies the duties and obligations but leaves the marriage bond in full force, a judicial separation. *Givens v Givens*, 121 Fla 271, 63 So 574; *People v John*, 181 Misc 921, 44 NYS2d 806.

A final judgment for divorce, if the divorce granted is an absolute divorce, dissolves the marriage bond and changes the status of the parties; if the divorce is limited, or, as sometimes called, a decree of separation from bed and board, it merely relieves the parties from their obligations and rights as to cohabitation, support, and property interests. 24 Am J2d Div & S § 1.

divorce a vinculo matrimonii. A judicial dissolution or termination of the bonds of matrimony, because of matrimonial misconduct or other statutory cause arising after the marriage ceremony, with the result that the status of the parties is changed from coverture to that of single persons. 24 Am J2d Div & S § 1.

divorced. Marriage dissolved absolutely. *Miller v Miller*, 33 Cal 353.

A husband against whom an interlocutory decree only has been entered is not divorced within the definition. *Re Newman*, 88 Cal App 186, 262 P 1112.

[366]

divorcée. A divorced woman.

divorce from bed and board. Same as **divorce a mensa et thoro**.

divorcement. Divorce; divorcing.

See **bill of divorcement**.

divorce proctor. A public official upon whom the process in a suit for divorce must be served. *Smythe v Smythe*, 80 Or 150, 149 P 516, 156 P 785.

Divorce Recognition Act. One of the uniform laws. 24 Am J2d Div & S § 494.

divortium. Divorce.

Divortium dicitur a divertendo, quia vir divertitur ab uxore. Divorce is said to be from "divertendo," because a man is diverted or turned away from his wife.

divot. See **feal and divot**.

divulge. To reveal.

Under a statute forbidding the interception or divulging of a telephone communication without the authority of the sender, to shunt a conversation so that a third person may and does hear it is to "divulge" a communication even though the person doing the shunting does not hear the conversation. *United States v Gruber* (CA2 NY) 123 F2d 307.

dixième. One-tenth.

dixit. See **ipse dixit**.

do. I give; I grant.

See **dedi**.

Dobson Rule. A decision of the United States Supreme Court that a Tax Court decision must stand if the appellate court cannot separate the elements of the decision so as to identify a clear cut mistake of law and the decision of such court has warrant in the record and a reasonable basis in the law. *Dobson v Commissioner*, 320 US 489, 88 L Ed 248, 64 S Ct 239, reh den 321 US 231, 88 L Ed 691, 64 S Ct 494.

dock. Noun: In common parlance, a wharf or pier. Technically, the space between wharves; a slip. *Boston v Lecraw* (US) 17 How 426, 15 L Ed 118. An artificial basin in connection with a harbor, used for the reception of vessels in the taking on or discharging of their cargoes, sometimes provided with gates for preventing the rise and fall of the waters occasioned by the tides. *The Robert W. Parsons*, 191 US 17, 48 L Ed 73, 24 S Ct 8. The word is also used to designate the place reserved in the courtroom for a prisoner on trial. Verb: To bring a vessel into dock. To clip or bob, as to "dock" a horse's tail. *Bland v People*, 32 Colo 319, 324, 76 P 359.

See **dry dock; graving dock.**

dockage. Compensation for use of a wharf; the charge made against a vessel for the privilege of mooring to a wharf or in a slip; also called wharfage. 56 Am J1st Whar § 30.

See **double wharfage.**

dockage lien. See **wharfage lien.**

docket. Noun: A term somewhat confusing because of variation in meaning between jurisdictions. Literally, a list or register of cases, whether for trial in the nisi prius court (53 Am J1st Trial §§ 5-7) or for hearing on appeal. 5 Am J2d A & E § 678. A record of cases and of the proceedings had in a case, although not a record in the extended form of a journal of the proceedings of a court. Verb: To enter upon the docket. An appeal is docketed when the appropriate papers are received by the clerk of the appellate court and the case has been entered by him on the docket, whether or not the clerk has received the docket fees. *Drennen v Johnson*, 65 Colo 381, 176 P 479.

See **calendar; docketing judgment; striking a docket.**

docketed. See **docket; docketing judgment.**

docket fees. Sums collected for placing the case on the docket or calendar; fees allowable to attorneys under a federal statute. Anno: 22 ALR 1208.

docketing judgment. Noting a judgment, which has been entered of record, upon the judgment docket, so that notice may be taken readily by anyone concerned, and that execution may be issued. 30A Am J Rev ed Judgm § 93. The entry of a judgment is a proceeding distinct from that of docketing. *Rockwood v Davenport*, 37 Minn 533, 35 NW 377.

See **entry of judgment.**

docking. See **dock.**

dock line. Same as **harbor line.**

dock warrant. A warehouse receipt.

doctor. A term most commonly applied to a physician. *Witty v State*, 173 Ind 404, 90 NE 627. Equally applicable to a dentist, even to a veterinarian. Applicable in fact to a person who has attained a doctorate conferred by a university in any branch of learning—medicine, law, divinity, philosophy, etc. *State v MacKnight*, 131 NC 717, 42 SE 580.

The degree of M. D. is something more than a mere honorary title. It is a certificate attesting the fact that the person upon whom it has been conferred has successfully mastered the curriculum of study prescribed by the authorities of an institution

created by law, and by law authorized to issue such certificate. It thus has a legal sanction and authority. But it has more. In practical affairs, it introduces its possessor to the confidence and patronage of the general public. Its legal character gives it a moral and material credit in the estimation of the world, and makes it thereby a valuable property right of great pecuniary value. *Townshend v Gray*, 62 Vt 378, 19 A 635.

The term is applied with a degree of levity to drug clerks, male nurses, hospital attendants, etc. Of course, calling a person "doctor" or "doc" does not qualify him as a professional. A person licensed to practice drugless healing is not a "doctor" and rules of law pertaining distinctively to the latter are not applicable to the former. *Kelly v Carroll*, 36 Wash 2d 482, 219 P2d 79, 19 ALR2d 1174.

See **physician**.

doctor and patient. See **physician and patient**.

Doctor and Student. An ancient treatise on the common law which is written in the form of a dialogue between a teacher and his pupil.

doctor of medicine. See **M.D.**; **physician**.

Doctors' Commons. An institution near St. Paul's Cathedral, where the ecclesiastical and admiralty courts are held. In 1768, a royal charter was obtained, by virtue of which the members of the society and their successors were incorporated under the name and title of "The College of Doctors of Laws exercent in the ecclesiastical and admiralty courts.—Wharton's Law Dict.

Doctor's Draft Act. A federal statute providing for the induction of members of the medical profession

[367]

into military service for assignment to the Medical Corps as commissioned officers of rank or grade commensurate with education, experience, and ability. *Nelson v Peckham* (CA4 Va) 210 F2d 574.

doctrine. A rule or principle of law which has been developed by the decisions of the courts.

For definition of a particular doctrine, see the concrete term, such as **anticipatory breach**; **earmark**; **inverse order of alienation**; **laches**; **pin money**; **res ipsa loquitur**; **shifting descents**; **tacking**, **virtual representation**; etc.

document. Any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of these means, intended to be used, or which may be used, for the purpose of recording that matter. 29 Am J2d Ev § 834. The term is broadly applied to writings, to words printed, lithographed or photographed, to seals, plates, or stones on which inscriptions are cut or engraved, to photographs and pictures, to maps and plans. *Arnold v Pawtucket Valley Water Co.* 18 RI 189, 26 A 55. The term is applicable as an instrument having operative effect in itself, such as a document of title, as well as to writings of evidentiary effect.

documentary evidence. Tangible objects capable of expressing a fact or tending to establish the truth or untruth of a matter at issue, including all kinds of documents, records, and writings. 29 Am J2d Ev § 834. In oral evidence, the witness is the person who speaks; in documentary evidence, the witness is the thing that speaks. *Curtis v Bradley*, 65 Conn 99, 31 A 591.

documentary bill. Same as **document bill**.

documentary exchange. Same as **document bill**.

documentary stamp tax. See **stamp taxes**.

document bill. A bill of exchange drawn by a consignor on a consignee of the goods with negotiable bill of lading attached to the bill of exchange evidencing collateral security, whereby the consignor is enabled to get immediate payment on account of the price of his goods.

document of title. A bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. 15 Am J2d Com C § 7.

do, dico, addico. I give judgment, I expound the law, I execute the law. These were the words which the Roman law permitted the praetor to use on triverbial days upon which he was allowed to decide cases. See 3 Bl Comm 424.

Doe. See **John Doe.**

doer. A person who does an act; an actor; an agent; an attorney.

dog. A canine animal useful in hunting, driving livestock, preventing intrusions upon property, and a source of pleasure as a pet. A thing of value within the meaning of a statute on burglary. 13 Am J2d Burgl § 24.

The old rule of the common law that a dog was not property and accordingly could not be the subject of larceny is preserved in a very few states, but dogs are now generally regarded as chattels and as subjects of larceny. 32 Am J1st Larc § 79.

Stealing a dog was not larceny at common law, because it was deemed not fit that a person should die for a dog. *State v Soward*, 83 Ark 264, 103 SW 741.

According to some authorities, dogs are livestock within the meaning of statutes relating to the duty of a railroad company toward livestock upon its track, but other authorities are to the contrary. 44 Am J1st R R § 591.

dogdraw. An arrest for killing deer made while the person arrested was on the scent with a dog.

dog hole. A nickname which was given to the Court of the Second Vice-Chancellor of England.

dogma. An order of the Roman senate. A belief, especially in the field of religion; an opinion asserted with arrogance.

dog racing. An amusement. A game within the meaning of some statutes penalizing the placing of bets upon a game. 24 Am J1st Gaming § 22. In some jurisdictions, conducted on a pari-mutuel basis for legalized betting.

dog tag. A metal tag with identification number obtained upon the registration of a dog. 4 Am J2d Am § 23. Jargon of the military for the identification tag worn by a man in the armed service.

doing business. Carrying on business; engaging in business. In the case of a corporation, the exercise of some of the functions and the carrying on of the ordinary business for which the corporation was organized. *Home Lumber Co. v Hopkins*, 107 Kan 153, 190 P 601, 10 ALR 879, 886.

doing business in state. A foreign corporation is doing, transacting, engaging in, or carrying on, business in the state when, and ordinarily only when, it has entered the state through its agents and is there engaged in transacting through them some substantial part of its ordinary or customary business, usually continuous in the sense that it may be distinguished from merely casual, sporadic, or occasional transactions and isolated acts. 36 Am J2d For Corp § 317. A combination of acts or transactions may constitute doing business, where neither of the acts or transactions taken separately amounts to doing business. 29 Am J Rev ed Ins § 68. A foreign corporation may safely be said to be doing business wherever an important combination of functions is being performed, such as the ownership, possession, or control of property, dealing with others in reference to the property, the

exercise of discretion, the making of business decisions, the execution of contracts, the marketing of a product by advertising and solicitation, and collecting for the sold product. 36 Am J2d For Corp § 319.

doing equity. See **he who seeks equity must do equity.**

doit. Same as **doitkin.**

doitkin. A small base coin the use of which was forbidden by statute under Henry the Fifth.

dole. A division of ore among miners; a payment to the unemployed; a gift by way of charity.

do, lego. I give and bequeath.

dolg bote. A compensation paid for inflicting a wound.

doll capax. (Civil law.) Capable of mischief. Between the ages of ten and a half to fourteen children were punishable for crime if they were proved capable of committing it. See 1 Bl

[368]

Comm 464. (Common law.) Between the ages of seven and fourteen children were punishable for crime if they could discern good from evil. See 4 Bl Comet 23.

See **doll incapax.**

doll incapax. Incapable of mischief. At common law a child under seven was doll incapax; that is, he could not be guilty of felony, but between the ages of seven and fourteen he was only prima facie dots incapax; that is, if it appeared to the court and the jury that he was dots capax and could discern between good and evil, he could be convicted and punished capitally. See 4 Bl Comm 23.

See **doll capax.**

doli mali. See **exceptio doli mali.**

dollar. The legal currency of the United States; State v Downs, 148 Ind 324, 327; the unit of money consisting of one hundred cents. The aggregate of specific coins which add up to one dollar. 36 Am J1st Money § 8. In the absence of qualifying words, it cannot mean promissory notes, bonds, or other evidences of debt. 36 Am J1st Money § 8.

dollar sign. An abbreviation (\$) for a dollar or dollars. 1 Am J2d Abbr § 9.

dolo. (Spanish.) Malice; fraud.

dolo malo. See **de dolo malo; ex dolo malo.**

Dolosus versatur in generalibus. A deceiver deals in generalities.

dolphin. A cetacean. A mammal of the sea, being a kind of whale. A porpoise. A buoy or float used as a mooring for a boat and also as a means of boarding a boat.

Dolum ex indiciis perspicuis probari convenit. Fraud should be established by clear proofs.

dolus. Malice; fraud; deceit.

Dolus auctoris non nocet successors, nisi in causa lucrativa. The fraud of one prejudices not his successor, unless a valuable consideration is wanting.

Dolus circuitu non purgator. Fraud is not purged by circuitry.

Dolus dans locum contractui. Fraud giving occasion for the contract; false representation, inducing a contract.

Dolus est machinatio, cum aliud dissimulat aliud agit. Deceit is an artifice, because it pretends one thing and does another.

Dolus et fraus nemini patrocinentur; patrocinari debent. Deceit and fraud will protect no one; they require protection.

Dolus latet in generalibus. Fraud lies hidden in generalities.

Dolus malus. Actual fraud arising from facts and circumstances of imposition.

Dolus versatur in generalibus. Fraud deals in generalities.

domain. The land of one who has paramount title and absolute ownership. *People v Shearer*, 30 Cal 645, 658.

See **demesne**; **public domain**.

Dombec. Same as **Dome Book**.

dome. A judgment.

Dome Book. Same as **Dome Book**.

Also called "Liber Judicialis,"—a compilation made in the time of Alfred, about 887, which was said to contain the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. See 1 Bl Comm 64.

Domesday Rook. A famous book in two volumes published during the reign of William the Conqueror and finished a short time before his death in 1087. The book contained the great survey of all England, except the counties of Cumberland, Northumberland, Durham, and part of Lancashire, and of all the manors held in ancient demesne, and it came to be of great value and assistance in the establishment of land titles. The book is said to have received its name because it was as general and conclusive as the last judgment will be. See 1 Bl Comm 49, 99; 3 Bl Comm 331.

domesmen. The judges of certain inferior courts in England.

domestic. Adjective: Belonging to the household or home; inhabiting the house. *Thurston v Carter*, 112 Me 361, 92 A 295. Local as distinguished from foreign. Noun: One employed as a servant in the home.

See **domestic servant**.

domestic animal. A tame animal, associated with family life, or accustomed to live in or near the habitation of men. *Thurston v Carter*, 112 Me 361, 92 A 295; *Commonwealth v Flynn*, 285 Mass 136, 188 NE 627, 92 ALR 206.

domestic association. An association existing in and sanctioned by the laws of a state. *United States v Cambridge Loan & Bldg. Co.* 278 US 55, 73 L Ed 180.

domesticated animal. An animal wild by nature which has been so reclaimed as to become tame and under the dominion and control of its master. Hurley v State, 30 Tex App 333.

domestication. Taming an animal wild by nature so as to bring it under the dominion and control of its master. 4 Am J2d Am § 17. The procedure by which a foreign corporation is given the status of the domestic corporation. 36 Am J2d For Corp § 374. The term is used at times in reference to procedure in licensing a foreign corporation or granting it a franchise to operate as a public utility and also to the actual reincorporation of a foreign corporation. 36 Am J2d For Corp § 376.

domestic attachment. An attachment which is levied on the property of a debtor who resides in the state where the levy is made. The term is significant in contrast to foreign attachment.

See **foreign attachment.**

domestic bill of exchange. A bill of exchange which is drawn on a drawee who resides in the same state as the drawer of the bill.

domestic citizenship. Citizenship of a state as distinguished from citizenship of the United States. Dred Scott v Sanford (US) 19 How 393, 15 L Ed 691. This case was decided in 1857. The Fourteenth Amendment declaring citizens of the United States to be "citizens of the State wherein they reside," was adopted in 1868.

[369]

domestic commerce. See **intrastate commerce.**

domestic corporation. A term contrasting with "foreign corporation," meaning a corporation of the state, that is, a corporation organized and created under the laws of the state. Sometimes, more elaborately defined by statute as a corporation created by or under the laws of the state, or located in the state and created by or under the laws of the United States. First Nat. Bank v Doying (NY) 13 Daly 509, 510. As the term is used in Federal statutes in connection with corporations or partnerships, its usual meaning is created or organized in the United States, and the word "foreign" in the same connection usually means created or organized outside the United States. Hecht v Malley, 265 US 144, 154, 68 L Ed 949, 956, 44 S Ct 46.

See **foreign corporation.**

domestic fixtures. Such chattels as have been affixed to a dwelling house for the comfort or convenience of the tenant. Such fixtures include stoves and ranges fixed in brickwork, furnaces, gas fixtures, pumps, clocks, window blinds, bath tubs. The tenant may lawfully remove domestic fixtures which have been annexed to the premises by himself for the more advantageous use thereof, provided no material injury results to the realty or to the substantial characteristics of the articles. Raymond v Strickland, 124 Ga 504, 52 SE 619.

domestic judgment. A judgment rendered by a court in the sovereignty or jurisdiction wherein rights or liabilities under the judgment are involved in an action. The term is significant only by way of contrasting such a judgment with a "foreign judgment." 30A Am J Rev ed Judgm § 232.

See **foreign judgment.**

domestic medicine. See **domestic remedy.**

domestic purposes. Uses of the services of a public utility which contribute to health, comfort, and convenience of a family in the enjoyment of their dwelling as a home. 43 Am J1st Pub Util § 182; 56 Am J1st Wat Wk § 57. Sometimes more elaborately defined by statute in reference to water rights and irrigation to include water for the household and an additional amount for domestic animals. Anno: Ann Cas 1912, 612.

As the term "domestic use" is used in an ordinance fixing water rates, it means the use to which water is applied by the family, or for family use, and includes all uses to which water is applied around the home; but it does not include the use of water in public parks or public pleasure resorts maintained by the city. *Water Supply Co. v Albuquerque*, 17 NM 326, 128 P 77.

See **family use**.

domestic remedy. An herb or other plant having, or believed to have medicinal value. The expression frequently occurs in statutes regulating the practice of medicine, and as there used the words refer to the administration of medicine in the family or in the household, without the aid of a physician. *State v Huff*, 75 Kan 585, 90 P 279.

domestics. Same as **domestic servants**.

domestic servants. Household employees rather than farm laborers or chauffeurs working outside. 57 Am J1st Wills § 1395. Servants who receive wages and stay in the house of the person paying and employing them for service to him or his family, such as valets, footmen, cooks, butlers and others who reside in the house. *Cook v Dodge*, 6 La Ann 275, 277.

domestics infra moenia. Domestics within the walls,—menial servants employed in and about a dwelling house. 35 Am J1st M & S § 530.

domesticum. See **forum domesticum**.

domesticus. A steward.

domestic use. See **domestic purposes**.

domicil. The relationship which the law creates between an individual and a particular locality or country. The place where a person has his true fixed permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning, and from which he has no present intention of moving. 25 Am J2d Dom § 1.

In a particular context, it may be the same as residence. Anno: 12 ALR2d 759; 57 Am J1st Wills § 766. It is not exactly synonymous with residence. It is (1) the fact of residence and (2) the intention to remain. Ex parte Weissinger, 247 Ala 113, 22 So 2d 510; *McIntosh v Maricopa County*, 73 Ariz 366, 241 P2d 801, 31 ALR2d 770. A person may have his residence in one place and his domicil in another. *Missouri Pacific R. Co. v Lawrence*, 215 Ark 718, 223 SW2d 823, 12 ALR2d 748. He can have only one domicil at the same time, though he may have more than one residence. *State v Allen*, 48 W Va 154, 160, 35 SE 990.

He who stops even for a long time in a place for the management of his affairs, has a simple habitation there, but has no domicil. *Re Thompson (NY)* 1 Wend 45.

See **change of domicil; commercial domicil; corporate domicil; domicil by operation of law; domicil of origin; floating intention; habitancy; habitation; home; loss of domicil; matrimonial domicil; national domicil; permanent abode; place of abode; place of usual abode; residence; settlement of a pauper; voluntary domicil**.

domicil by operation of law. That domicil which the law attributes to a person independent of his own intention or selection. This results generally from the domestic relations of husband and wife or parent and child, the domicil of the wife or the child following that of the husband or father as a legal consequence. *Re Estate of Jones*, 192 Iowa 78, 182 NW 227, 16 ALR 1286, 1289; *Re Weber*, 187 Misc 674, 64 NYS2d 281.

The words "resides" as used in a statute providing that proceedings to remove disabilities of a minor shall be instituted in the county where he resides, does not mean his bodily presence, but his legal domicil, which is that of his father. *Gulf, C. & S. F. R. Co. v Lemons*, 109 Tex 244, 206 SW 75, 5 ALR 943.

domicile. Same as **domicil**.

domiciled note. A promissory note payable at a designated bank. 11 Am J2d B & N § 22.

domiciliary administrator. An administrator of a decedent's estate appointed and acting at the place of the decedent's domicil. 31 Am J2d Ex & Ad § 681.

domiciliary executor. An executor appointed and acting at the place of the testator's domicil. See 31 Am J2d Ex & Ad § 688.

domiciliate. To establish one's domicil in a place.

domicilii. See **forum domicilii**.

domicilii actoris. See **forum domicilii actoris**.

[370]

domicilii rei. See **forum domicilii rei**.

domicilium ex proprio motu. (Latin.) Domicil of one's own choice.
See **domicil of choice**.

domicilium originis. (Latin.) Domicil of origin; the domicil assigned to a child at his birth. 25 Am J2d Dom § 13.
See **domicil of origin**.

domicil of child. See **domicil by operation of law**.

domicil of choice. The true domicil; the place which a person has voluntarily chosen for himself to displace his previous one. Ex parte Weissinger, 247 Ala 113, 22 So 2d 510; Re Estate of Jones, 192 Iowa 78, 182 NW 227, 16 ALR 1286, 1289.
See **domicil of prisoner**.

domicil of corporation. See **corporate domicil**.

domicil of matrimony. See **matrimonial domicil**.

domicil of nativity. The place of a person's birth.
See **domicil of origin**.

domicil of origin. The domicil assigned to a child at its birth. 25 Am J2d Dom § 13; Kowalski v Wojtkowski, 19 NJ 247, 116 A2d 6, 53 ALR2d 556. The domicil which a person acquires at birth, it being the domicil of his parents or of the person upon whom he is legally dependent. Ex parte Weissinger, 247 Ala 113, 22 So 2d 510; Re Estate of Jones, 192 Iowa 78, 182 NW 227; 16 ALR 1286, 1289; Re Weber, 187 Misc 674, 64 NYS 281.

domicil of a prisoner. A paradoxical expression. A prisoner, being under legal restraint, cannot acquire a domicil in his prison; his former domicil continues during his imprisonment. Likewise, where a prisoner is compelled to live within the liberties of the prison, he acquires no domicil there; his residence there is merely a continuation of his imprisonment. Nor would his desire to live within the prison make it his domicil. Wendel v Hoffman (DC NJ) 24 F Supp 63.

domicil of wife. See **domicil by operation of law; matrimonial domicil**.

domigerium. The power or dominion which one person has over another.

domina. A dame; a woman who held a barony in her own right.

dominant.. Controlling; principal; ruling.

dominant estate. Same as **dominant tenement.**

dominant part. If the purchaser of trade-marked goods would be more likely to remember one part of a mark than another part as indicating origin of the goods, such word is the dominant part of the mark. As, the dominant part of the mark "Wheato-Nuts" is "nuts," and considered in its entirety this mark is confusingly similar to "Grape-Nuts," a mark whose dominant part is the same. *Langendorf United Bakeries v General Foods Corp.* 29 Cust & Pat App (Pat) 831, 125 F2d 159.

dominant tenement. A tenement for the benefit of which an easement in the form of a charge or burden is imposed upon a servient tenement. 25 Am J2d Ease § 8.

domination. Rule or control.

See **interference and domination.**

dominical. Pertaining to the Lord or to Sunday.

dominicide. The killing of his master by a servant, slave or vassal.

dominicum. A demesne; a church.

See **demesne.**

dominicum antiquum. Same as **ancient demesne.**

dominio. A term used in Spanish-American grants, meaning the right of power to dispose freely of a thing, if the law, the will of the testator, or some agreement does not prevent. *Castillero v United States* (US) 2 Black 1, 17 L Ed 360, 400.

dominio directo. The term used in Spanish-American grants, meaning, the right a person has to control the disposition of a thing, the use (utilidad) of which he has ceded. *Castillero v United States* (US) 2 Black 1, 17 L Ed 360, 400.

dominion. Control; ownership. The rights of dominion or property are those rights which a man may acquire in and to such external things as are unconnected with his person. See 2 Bl Comm 1.

dominion over premises. A present ability to control plus an intent to exclude others from control. 3 Am J2d Adv P § 13.

dominio pleno y absoluto. A term used in Spanish-American grants, meaning, the power one has over anything to alienate independently of another-to receive its fruits-,to exclude all others from its use. *Castillero v United States* (US) 2 Black 1, 17 L Ed 360, 400.

dominio util. A term used in Spanish-American grants, meaning the right to receive all the fruits of a thing subject to some contribution or tribute, which is paid to him who reserves in it the dominium directum. *Castillero v United States* (US) 2 Black 1, 17 L Ed 360, 400.

dominium. Dominion; control; ownership.

dominium directum. Direct ownership, i. e. allodial or legal tenure.

dominium directum et utile. The complete and absolute dominion in property; the union of the title and the exclusive use. See *Fairfax's Devisee v Hunter's Lessee* (US) 7 Cranch 603, 618, 3 L Ed 453, 458.

dominium eminens. (Civil law.) The right of eminent domain. *Gilmer v Lime Point*, 18 Cal 229, 251.

Dominium non potest esse in pendent. Ownership cannot be held in suspense.

dominium plenum. Full or complete ownership of property.

dominium utile. Equitable or beneficial ownership of property.

domino volente. With the consent of the owner.

dominus. Lord; master; principal.

Dominus capitalis feodi loco haeredis habetur, quoties per defectum vet delictum extinguitur sanguis tenentis. The chief lord of the fee is regarded as heir whenever the

[371]

blood of the tenant becomes extinct either through failure of heirs or attainder. See 2 Bl Comm 247.

dominos ligius. Liege lord, the king. See 1 Bl Comm 367.

dominos litis. A person who controls a litigation.

dominos manerii. The lord of the manor.

dominos navis. The master of a ship.

Dominus non maritabit pupillum nisi semel. A lord cannot give his ward in marriage more than once.

dominus pro tempore. The temporary master of a ship. The charterer of a vessel may be to some purposes such a master. *Laugher v Pointer*, 5 Barn & C 547, 108 Eng Rep 204.

Dominus rex nullum habere potest parem, multo minus superiorem. The king cannot have an equal, much less a superior.

domitae. Reclaimed; domesticated; domestic.

domitae naturae. Animals which are naturally tame and gentle or which, by long continued association with man, have become thoroughly domesticated and reduced to such a state of subjection that they no longer possess the inclination or disposition to escape. 4 Am J2d Am § 2.

domo reparanda. A writ to compel a person to repair his house and thus prevent its falling upon his neighbor's property.

dom. proc. An abbreviation of **domus procerum**, –the house of lords.

domus. house; a dwelling house; a home; a domicil; a residence.

domus capitularis. A chapter house.

domus Dei. The house of God,—a church; a hospital.

domus mansionalis. Mansion house.

See **mansion house.**

domus mansionalis Dei. The mansion house of God. Lord Coke said that burglary could be committed in a church because it was the mansion house of God. See 4 Bl Comm 224.

domus procerum. The English house of lords.

Domus sua cuique est tutissimum refugium. A man's home is his safest refuge. Davison v People, 90 Ill 221, 229.

Domus tutissimum cuique refugium atque receptaculum. The home of each person is his safest refuge and asylum.

dona. Gifts.

Dona clandestina sunt semper suspiciosa. Secret gifts are always open to suspicion.

donare. To give.

Donari videtur quod nulli jure cogente conceditur. That is considered as given which is transferred under no legal compulsion.

donatarius. A person who receives a gift; a donee.

donate. To give, generally for a specific object; to bestow freely. State v Sioux City & Pacific Railroad Co. 7 Neb 357, 373.

donatio. That which is given; gift.

donatio causa mortis. See **gift causa mortis.**

donatio feudi. The gift of a fee.

donatio inter vivos. Same as **gift inter vivos.**

donatio mortis causa. See **gift causa mortis.**

donation. The act by which the owner of a thing voluntarily transfers the title and possession of the same without any consideration. Georgia Penitentiary Co. v Nelms, 65 Ga 499.

The word is synonymous with gift. Mills v Stewart, 76 Mont 429, 247 P 332, 47 ALR 424.

See **gift.**

Donationes sint stricti juris, ne quis plus donasse praesumatur quam in donatione expresserit. Gifts should be of strict construction, lest anyone may be presumed to have given more than is described in the gift. See 2 Bl Comm 108.

donation inter vivos. Same as **gift inter vivos.**

donation lands. Lands reserved by the state of Pennsylvania and allotted to citizens of that state who fought in the Revolutionary War.

Donatio non praesumitur. A gift is not presumed to have been made.

Donationum alia perfecta, alia incepta, et non perfecta; ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsecuta. Some gifts are complete, others are either incipient or not complete, as if a gift were considered and agreed upon, but delivery had not yet followed.

Donatio perficitur possessione accipientis. A gift is perfected by the possession of the donee. A maxim of the ancient English law. Hatch v Atkinson, 56 Me 324.

donatio propter nuptias. A gift in consideration of marriage.

donatio regis. See **ex donatio regis.**

donatio velata. A veiled or hidden gift; a gift for a pretended consideration.

donative advowson. Same as **advowson donative.**

donative intent. The intent to make a gift. Commissioner v Duberstein, 363 US 278, 4 L Ed 2d 1218, 80 S Ct 1190.

donator. A person who makes a gift; a donor.

donatorius. A person who receives a gift; a donee.

[372]

Donator nunquam desinit possidere antequam donatarius incipiat possidere. A donor never ceases to possess until the possession of the donee begins.

donatory. A person who receives a gift from the crown.

donec. Then.

done. Completed.

See **de son done.**

donec. Until; while; as long as.

donee. A person to whom a gift is made; a grantee.

donee-beneficiary. A third person designated to receive the benefit of performance by one of two contracting parties under the terms of the agreement with the other, who is a stranger to the consideration and is to receive the benefit of performance as a pure donation by the promisee. *Breaux v Banker* (Tex Civ App) 107 SW2d 382.

Dongan charter. A charter granted for the city of New York under James the Second in 1686, by Thomas Dongan as lieutenant-governor.

donkey. A domestic animal, often known as a jackass. 4 Am J2d Am § 22.

Donkey Case. See *Davies v Mann*.

donor. A person who makes a gift.

donque. Same as **donc**.

donum. A gift.

doom. A judgment. A tragic fate.

dooming. The practice of county assessors in "estimating" the value of property belonging to persons liable to taxation, in cases where such persons have failed or neglected to make returns thereof. *Thurston v Little*, 3 Mass (3 Tyng) 429, 433.

Doomsday Book. Same as **Domesday Book**.

door. A movable panel for closing the entrance to a building or room.

See **open doors; outer door**.

dormant. Sleeping; silent; inactive for the time being; in abeyance.

dormant claim. A claim held in abeyance; a claim barred by the statute of limitations.

dormant execution. An execution which has lost its priority from delay in making any levy under it. A writ of execution duly made out and signed by the clerk of court, and otherwise ready for levy, but marked "to lie," and not issued to an officer for levy. *Davis v Roller*, 106 Va 46, 55 SE 4.

dormant judgment. A judgment no longer active, its active period having been terminated by the death of a party or the lapse of time and the failure to take any steps to continue or enforce it. 30A Am J Rev ed Judgm § 568. A judgment which must be revived before execution will be issued thereon and before other steps in enforcement may be taken. 30A Am J Rev ed Judgm § 570.

dormant lien of judgment. The lien of a judgment which is in abeyance while the land is exempt from execution, but which becomes active or potential when the exemption ceases to exist. 26 Am J1st Home § 94. The lien of a dormant judgment during the period of dormancy in jurisdictions which adhere to the view that upon the revival of a dormant judgment, the lien of the judgment is considered to have been a continuous lien from the date of entry of the judgment. 30A Am J Rev ed Judgm § 579.

dormant partner. A silent partner, one whose connection with the firm is concealed from the public and who takes no part in the conduct of the business or affairs of the firm. 40 Am J1st Partn § 15.

See **silent partner**.

dormant titles. A title to real estate held in abeyance, unasserted.

See **buying and selling dormant titles; trading in dormant titles.**

dormitory. A room or building with sleeping accommodations for a number of people. *United Cerebral Palsy Assn. v Zoning Board*, 282 Pa 67, 114 A2d 331, 52 ALR2d 1093.

Dormiunt aliquando leges, nunquam moriuntur. Although the laws sometimes sleep, they never die.

Don's Rebellion. A rebellion against the state government of Rhode Island in 1842, led by Thomas W. Dorr. *Luther v Borden* (US) 7 How 1, 12 L Ed 581.

dorso recordi. See **in dorso recordi.**

dorsum. The back of anything.

dorture. A lodging place; a dormitory.

dos. A dowry; dower. Roman law dower. 25 Am J2d Dow § 12.

Dos de dote peti non debet. Dower ought not to be sought from dower. *Brooks v Everett*, 95 Mass (13 Allen) 457, 459.

dos rationabilis. Reasonable or legitimate dower. If no specific dotation was made at the church porch, at the time of the marriage, the common law endowed the wife of a third part of such lands and tenements as the husband was wised at the time of the marriage, and no other. This third part was her *dos rationabilis*. See 2 Bl Comm 133.

Dos rationabilis vel legitima est cujuslibet mulieris de quocunq; tenemento tertia pars omnium terrarum et tenementorum, quae vir suus tenuit in dominio suo ut de feodo. Reasonable or legitimate dower is for every woman a third part of all the lands and tenements which her husband held in his demesne as of fee.

dot. See **dotal property; dowry.**

dotage. Feebleness of the mental faculties which proceeds from old age. 29 Am J Rev ed Ins Per § 3.

dotalitium. Dower.

dotal property. That property which a wife brings to the husband to assist him in bearing the expenses of the marriage establishment. 15 Am J2d Community Prop § 3.

Dotal property as here defined was not known to the common law, but appears to be peculiar to the state of Louisiana. *Hayes v Pratt*, 147 US 550, 37 L Ed 276, 13 S Ct 495.

dotation. The endowment of a woman with a dowry or marriage portion; any other endowment, as that of a public charity.

[373]

dote. To be delirious, silly, or insane. *Gates v Meredith*, 7 Ind 440; 441.

dote assignanda. A writ that lay for a widow, where it was found by office that the king's tenant was wised of tenements in fee or fee tail at the day of his death, and that he held of the king in chief. In such case, the widow came into chancery, and there

made oath that she would not marry without the king's leave, and she had this writ to the escheators. These widows were called "king's widows."—Holthouse's Law Dict.

Dote lex favet; praemium pudoris est, ideo parcatur. The law favors dower; it is the reward of virtue, therefore it should be spared or kept alive.

dote unde nihil habet. Dower from whence she has nothing,—a writ of dower which lay for a widow against a tenant of lands to whom her husband had conveyed them and of which her husband was solely seised in fee simple or fee tail, and of which she was dowable. See 1 Bl Comm 182.

dotis administratio. The admeasurement of dower; that is, the assignment or adjustment of a widow's dower.

dotissa. A dowager; an endowed widow.

Douay Bible. The translation or version of the Bible used by the Roman Catholic Church, the name coming from Douay, a municipality of France, where the Old Testament of such translation or version was published early in the 17th century.

double adultery. Adultery committed where both parties to the offense are married persons. *Hunter v United States* (Wis) 1 Pinney 91.

double agency. An agency on the part of one agent acting for two principals. 11 Am J2d B & N § 479.

double allegiance. See **dual nationality.**

double avail of marriage. Two times the ordinary or single value of a marriage.
See **value of the marriage.**

double bond. A bond providing a penalty for its nonfulfillment, as distinguished from a single bond which carries no penalty.

double comma. Same as **ditto mark.**

double complaint. A complaint made before an ecclesiastical court against both the judge who delayed or refused justice and the defendant in the cause in which the grievance arose.
See **double pleading; joinder of causes of action.**

double contingency. See **remainders on a contingency with a double aspect.**

double conversion. That which takes place when land is directed to be sold and converted into money, and these proceeds are directed to be laid out again in land, the whole forming one continuous obligation. The property, in such case, is considered to be in that state in which it is ultimately to be converted; that is, to be land. Double conversion does not differ from single conversion, but the property is treated as if already converted into that species of property into which it is directed to be changed, no matter whether the steps are more or less numerous. *Ford v Ford*, 80 Mich 42, 53.
See **reconversion.**

double costs. Additional allowances imposed against a party because of the nature of the action or delaying tactics. Where a statute gives double costs, they are to be calculated thus: the common costs; and then half the common costs. *Van Auken v Decker*, 2 NJL 108, 111.

double cousin. The relationship of cousin traceable through both the paternal and maternal lines; the same degree of relationship as an ordinary cousin. 23 Am J2d Desc & D § 61.

double creditor. A term connected with marshaling assets, meaning a creditor who holds a lien upon two separate and distinct funds or securities. *Newby v Norton*, 90 Kan 317, 133 P 890.

double damages. Multiple damages awarded under statutory authority for certain classes of wrongs, some courts regarding the excess of the award over the amount of injury actually sustained as an extraordinary liability imposed by way of penalty, others regarding it as an extraordinary liability imposed under a statute which is remedial and nonpunitive. 22 Am J2d Damg §§ 267, 268. The damages awarded for waste in some jurisdictions. 56 Am J1st Waste § 36. A term for an allowance on inconsistent theories. Anno: 17 ALR2d 1323.

See **exemplary damages**.

double deadwoods. See **buffers**.

double-decker. A bus with two levels for passengers. 7 Am J2d Auto § 163. Also, a large sandwich.

double derivative suit. An action, brought by a stockholder in a corporation which holds stock in a second corporation for wrongs to the second corporation, where it appears that neither corporation is willing to enforce the right of action. Anno: 154 ALR 1296.

double fine. Same as **fine sur done grant et render**.

double gibbet. A gibbet with arms projecting in opposite directions for double executions.

double indemnity. A double recovery under an insurance policy for loss occurring under certain conditions, for example, an accidental death of one insured under a life insurance policy.

double insurance. Coverage of the same risk and same interest by different insurers. *Western Union Tel. Co. v Houghton*, 146 Pa 561, 23 A 248.

See **contribution between insurers; excess insurance; other insurance clause**.

double jeopardy. See **prior jeopardy**.

double letter. A term of significance in communications of an older period, meaning a letter consisting of two sheets. *Williams v Wells, Fargo & Co. Express* (CA9 Ark) 177 F 352.

double liability. Double recovery for a single liability. *St. Louis S.W.R.Co. v Meyer* (Me) 272 SW2d 249, 46 ALR2d 964.

See **double damages**.

double liability of stockholder. See **superadded liability**.

double meaning. See **ambiguity**.

double parking. The parking of a vehicle on the roadway side of any vehicle parked or standing at the edge or curb of a street. 7 Am J2d Auto § 236.

double patenting. The obtaining of a second patent by the same applicant on the same invention. *Mellvaine Patent Corp. v Walgren Co.* (DC 111) 44 F Supp 530.

double plea. A plea setting up two or more several

[374]

and distinct defenses. *Handy v Waldron*, 18 RI 567, 29 A 143.

double pleading. A pleading which in one count or paragraph sets out two or more several and distinct causes of action or two or more several and distinct defenses. *Handy v Waldron*, 18 RI 567, 29 A 143.

See **duplicity**.

double possibility. See **possibility on a possibility**.

double punishment. The punishment of a person two or more times for the same offense, such being within the prohibition of provisions against double jeopardy.

See **former jeopardy**.

double quarrel. Same as **double complaint**.

double rent. A common statutory penalty of double the amount of the agreed rental for a holding over by the tenant after the time specified in the landlord's notice to quit.

double taxation. In a very broad sense, any situation in which it can be contended with some show of reason that the same person or property has been subjected to more than one tax burden. 51 Am J1st Tax § 284. More precisely, for the purposes of a constitutional prohibition, taxing twice, for the same purpose, by a tax of the same kind, in the same year, some of the property in the taxing district, without imposing the same levies upon all the property of the same kind in the district. 51 Am J1st Tax § 284.

double voucher. A form of common recovery wherein the praecipe or writ was brought against an indifferent person to whom a conveyance of an estate of freehold had been made as a matter of form, and who then vouched the tenant in tail, the latter thereupon vouching the common vouchee. See 2 Bl Comm 359. See also 2 Bl Comm Appx V.

double waste. Cutting timber to obtain material for making repairs to buildings, without making the repairs.

double wharfage. Double the amount of the usual charge for the use of a wharf, recoverable by statute when a vessel leaves a wharf without paying wharfage. 56 Am J1st Whar § 30.

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

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

doubt. Uncertainty. That state of a person's mind which exists where evidence in reference to the fact to be proved fails to generate a rational belief of the existence of the fact. *Rowe v Baber*, 93 Ala 422, 425.

See **reasonable doubt**.

doubtful title. A title which is open to reasonable doubt; one for which a purchaser who takes it probably will be subjected to contest and litigation; one which can be established only by parol testimony difficult to procure; one that an ordinarily prudent

man would not accept if he were buying the property or taking it as security for a loan. *Wanner v De Nyse*, 188 NY 378, 80 NE 1088.

dough. The mixture of flour and other ingredients from which bread and pastries are baked. A slang term for money or wealth.
See **dot**.

Do ut des. I give that you may give. This was the first species of consideration under the civil law, and applied to a giving of money or goods under a promise of repayment in money or goods, and to loans of money, and contracts of sale. See 2 Bl Comm 444.

Do ut facias. I pay in order that you may perform. This was the fourth species of consideration under the civil law and was the counterpart of the third (*facio ut des*); as when I agree with the servant to give him such wages upon his performance. See 2 Bl Comm 445.

doves. Birds of intrinsic value because the carcass is food, but which constitute a subject of property only when in the care and custody of the owner. 4 Am J2d Am § 19. A term recently applied to members of Congress and other public figures opposed to the escalation of the Vietnam War.

dowable. The state or condition of a widow who is entitled to dower out of the real property of her deceased husband. The term is also applied to lands or other property of the husband which are subject to, or chargeable with, dower.

dowager. A widow to whom her dower has been assigned. See 2 Bl Comm 136.

dowager queen. The widow of the king of England, at present the gracious and well-beloved Elizabeth, widow of George VI.

dower. The legal right or interest which the wife acquires by marriage in the real estate of her husband. At common law it consists in the use, during her natural life after the death of her husband, of one-third of all the real estate of which her husband was beneficially seined, at any time during the marriage, by a title such as might pass by inheritance to the children of the marriage. The same term is often used to describe the rights given to widows in the real estate of their husbands by statute, even where the statutory rights differ from the common-law estate of dower. Sometimes the term is used to describe a widow's statutory rights in her husband's real and personal estate, even personal estate alone, and the rights of a husband in the real estate of his deceased wife. 25 Am J2d Dow § 1.

See **admeasurement of dower; assignment of dower; dowable; dower consummate; inchoate right of dower; jointure; quarantine; release of dower; tenant in dower; widow's third.**

dower ad ostium ecclesiae. Dower at the door of the church,—a form of dower given openly at the time of a marriage ceremony, at the very door of the church wherein the marriage was celebrated by a tenant in fee simple of full age, who after "affiance made and troth plighted," endowed his wife with the whole or a part of his lands, publicly specifying her portion in such manner that after his death she might enter upon the same without further ceremony.

dower by particular custom. That species of dower to which a widow is entitled because of a particular custom, such as that she should have half of her husband's lands, or in some places the whole, and in some others only a quarter. See 1 Bl Comm 132.

dower consummate. The right of a widow to her dower in her husband's real property which accrues to her immediately upon his death. Upon the husband's death, the widow's right of dower becomes consummate. It has ceased to be a contingency. But still it remains a mere right in the nature of a chose in action. She has the right to have the estate assigned to her, but she has no estate until it has been assigned. *Underground Electric Railways Co. v*

Owsley (CA2 NY) 196 F 278. Once assigned, the consummate dower is a vested right in the property assigned and the widow's rights in other lands of the decedent cease altogether. 25 Am J2d Dow § 8.

dower de la plus belle. Dower of the fairest part,—a species of dower which was assigned to the widow from the fairest part of her husband's lands and which was abolished with the military tenures, of which it was a consequence. See 2 Bl Comm 132.

dower ex assensu patris. Dower by the consent of the father,—a form of dower wherein the husband endowed his wife openly at the time of the marriage and at the door of the church, with lands upon which she might enter upon his death without further ceremony, but in this case it was the father of the bridegroom who was seised in fee of the lands in question, and the father's consent, expressly given, was a necessary part of the son's right to designate such lands as the dower of his wife. By this form of dower, a wife might enter upon her dower after the death of her husband although the father still lived.

dower unde nihil habet. Same as **de dote unde nihil habet**.

dowle stones. Stones employed to mark a boundary.

dowment. Same as **endowment**. Also, same as dower.

dowment ad ostium ecclesiae. Same as dower ad ostium ecclesiae.

down draft. A term familiar in aviation, signifying a turbulent atmospheric condition. 8 Am J2d Avi § 96. Downes v Bidwell. See Foraker Act.

dowress. A woman who is entitled to dower.

dowry. A term of several meanings, dependent upon the historical source, but not the same as the dower of the common law.

The "dowry" of biblical times bore no resemblance to common-law "dower," but was a gift made by the suitor to the father or other near relatives of the intended bride. A similar custom prevailed among the Greeks, but Aristotle states that it had come to be looked upon as a relic of barbarism in their ancestors, as it was virtually a purchase of their wives. Neither is it like the dower, called "dot" of the Roman law (or the "dot" still in France), which was the marriage portion which the wife brought to her husband, in land or money. The French "dot" (pronounced "doe"), with its attraction to foreign suitors of American heiresses, is the origin of the slang word "dough" for property. State ex rel. Corporation Com. v Dunn, 174 NC 679, 94 SE 481.

See **dotal property**.

doz. Abbreviation for dozen.

dozein. An ancient municipal district which was composed of twelve families.

dozer. Same as **bulldozer**.

D. P. An abbreviation of domus procerum, the English house of lords. Also an abbreviation for displaced person.

dr. Common abbreviation for debtor.

Dr. An abbreviation for Doctor.

Draconian laws. A code of laws compiled by Draco the "lawgiver" of Athens; the term is applied to laws which are unreasonably harsh or severe.

draff. Dirt dregs, impurities. Sometimes confused with "draft," the arbitrary deduction from gross weight of an imported article, formerly employed in customs offices to assure the importer that he was not prejudiced by the scales used.

draft. An order in writing by one person on another to pay a sum of money therein specified to a third person on demand or at a future time therein stated. 11 Am J2d B & N § 14. A term completely synonymous with "bill of exchange." See *State v Di Nocla*, 163 Ohio St 140, 56 Ohio Ops 185, 126 NE2d 62. A term preferable to bill of exchange in the connotation of commercial paper. UCC § 3-104(2)(a). In military parlance, the enforcement of the duty of a citizen to perform military service. *Lanahan v Birge*, 30 Conn 438, 443. An arbitrary deduction from the gross weight of an imported article, formerly employed in customs offices to assure the importer that he was not prejudiced by the scales used. 21 Am J2d Cust D § 87; sometimes spelled "draught." A copy of an instrument, such as a will, otherwise known as a first draft, from which the executed instrument was drawn. A rough copy of a plan for the construction of a building or other structure.

A bank draft is a bill of exchange drawn by a bank; where drawn upon another bank, it has the same general effect as a check drawn by an ordinary person. 11 Am J2d B & N § 14.

See **military draft; overdraft; selective draft.**

draft dodger. One who evades a draft for service in the armed forces of the country.

See **Selective Draft Law.**

draftsman. A scrivener; the person who prepares a deed, will or other instrument. A person skilled in drawing designs or plans for buildings, other works of construction, and machines.

dragnet clause. A provision of a mortgage which broadens the security clause to cover all indebtedness of the mortgagor to the mortgagee of past or future origin, existing indebtedness, advances to be made by the mortgagee to the mortgagor, and indebtedness of the mortgagor to the mortgagee created subsequent to the execution of the mortgage. Anno: 172 ALR2d 1082.

dragnet of conspiracy. A phrase applied to the tendency of prosecutors, in prosecuting for the crime of conspiracy, to charge as defendants all persons who have been associated in any degree whatsoever with the main offenders. *United States v Falcon* (CA2 NY) 109 F2d 579.

dragoman. A Turkish court interpreter.

drain. A hollow space in the ground, either natural or artificial, where water is collected or drained away. *Barton v Drainage* Dist. 174 Ark 173, 294 SW 418. The word has been construed as being broad enough to include a sewer. *Barton v Drainage* Dist. 174 Ark 173, 294 SW 418.

See **drainway; natural drainway.**

drainage. The conveying from land, by natural or artificial means, of water not absorbed by the soil. "This word is not inept to express the concept of water which has escaped from a reservoir by percolation and is drawn off when it appears again on the surface." *United States v Warm Springs Irrig. Dist.* (DC Or) 38 F 239.

See **cutoff drainage; right of drainage.**

drainage district. A governmental corporation of limited powers, in the nature of a public or quasipublic corporation, similar to a municipal corporation, although not created for political purposes or for the administration of civil government, but for the purpose of creating and maintaining a project for the drainage of lands within the district. 25 Am J2d Drains § 6.

drainage ditch. A ditch dug for the purpose of drainage of land; not a "water course" in the true sense of the term. 56 Am J1st Water § 151.

drainway. A way for the drainage of surface water. 56 Am J1st Water § 76.

See **drain; drainage; natural drainway.**

dram. An alcoholic beverage in a small portion. Lacy v State, 32 Tex 227, 228.

drama. A story represented by action, the representation being as if the real persons were introduced and employed in the action itself. 4 Am J2d Amuse § 3.

It is ordinarily designed to be spoken, but may be represented in pantomime, when the actors use gesticulations, but do not speak; in the form of ballet where the portrayal is by dance; or in opera where music takes the place of poetry and of ordinary speech, and the dramatic treatment is essentially different from the other methods of representation. Bell v Mahn, 121 Pa 225, 15 A 523.

dram shop. A place where intoxicating liquor is sold at a public bar. 30 Am J Rev ed Intox L § 20.

draw. Noun: A small stream; a creek, Aldritt v Fleischauer, 74 Neb 66, 103 NW 1084; a way for the drainage of surface water. 56 Am J1st Water § 76. The movable section of a drawbridge. Savannah, Florida & Western R. Co. v Daniels, 90 Ga 608, 17 SE 647. Verb: To write in due form; to prepare a draft of, as to draw a memorial, a deed, or a bill of exchange. Hawkins v State, 28 Fla 363, 367. To obtain as a prize.

draw a prize. To ascertain, by chance or otherwise, who is entitled to a particular result, or a particular thing, by means of some pre-arranged mode of ascertaining the result.

As soon as the number, which entitles the ticket holder to the money or article, is drawn from the wheel, or otherwise ascertained, the prize is said to be drawn. The receiving of the prize is a separate act. People v Kent, 6 Cal 89.

drawback. The refund of duties paid upon the importation of materials used in the manufacture or production of articles in the United States, when such articles are exported. 21 Am J2d Cust D § 16.

Dram Shop Acts. Same as **Civil Damage Acts.**

draught. See **draft.**

drawbridge. A bridge, one or more sections of which can be lifted or moved aside to permit the passage of boats. Savannah, Florida & Western R. Co. v Daniels, 90 Ga 608, 17 SE 647.

drawee. The person upon whom a draft or bill of exchange is drawn; the person to whom the paper is presented for acceptance and payment. drawer. The maker of a draft or bill of exchange.

drawing. To pull. To drag a person along the ground or pavement to the place of execution, as a part of his punishment, particularly for the crime of treason. State v Woodward, 68 W Va 66, 69 SE 385. See 4 Bl Comm 92.

See **draw.**

drawing account. The account of an employee, usually a salesman working on a commission or part-commission basis, with the employer, upon which advances are made to the employee at intervals fixed by the contract of employment or upon request by the employee. Anno: 95 ALR2d 505. The privilege of having a drawing account as defined above.

drawing jurors. See **selection of grand jurors; selection of jurors.**

drawlatches. Thieves; robbers.

drawn. See **draw.**

drawn in blank. See **in blank.**

draw on. To prepare, sign, and deliver a draft for acceptance by another.

draw poker. The conventional form of the game of poker, the play being upon a hand of five cards obtained upon one deal or by way of replacement of discards. 24 Am J1st Gaming § 20.

dray. A wagon with detachable sides, horsedrawn, and used for the transportation for hire of goods, wares, merchandise, and other property.

A dray has been held to be exempt from execution, under a statute exempting a wagon. *Cone v Lewis*, 64 Tex 331.

drayage. The transportation of commodities by drays. *Soule v San Francisco Gas-light Co.* 54 Cal 241.

See **drayman.**

drayman. A wagoner or cartman, the forerunner of the modern trucker, his vehicle being pulled by horses. 13 Am J2d Car § 17.

Dr. Bonham's Case. A famous English case which held that a statute impossible of performance or against common right and reason was void at common law.

dredge. A vessel equipped for the removal of accumulated dirt, stone, and refuse in a harbor or waterway; a vessel within admiralty jurisdiction. 2 Am J2d Adm § 33. But not a watercraft for all purposes. *Bartlett v Steam Dredge*, 107 Mich 74.

dredging. Scooping dirt, rocks, or debris from the bottom of a harbor or river to deepen the harbor or channel, thereby improving navigation; opening a ditch through a swamp or other area to give better drainage.

Dred Scott Case. The famous case of *Scott v Sanford* (US) 19 How 393, 15 L Ed 691, holding that the United States courts had no jurisdiction over the question as to whether slaves who had been permitted to pass from the state of their domicile into a free state acquired thereby a right to freedom after their return to the state of their domicile, but that the courts of the latter state alone could decide as to their status or condition as free or slave.

dreit dreit. Same as **droit droit.**

dreng. A tenant in capite; that is, a tenant who held his land immediately of the king.

drengage. The land tenure of a dreng.

dressings. The clothing of a person. An application of drugs or materials to a wound for the purpose of hastening healing and preventing infection. The preparation of a carcass to make it edible and tasty. The process is concluded when the meat is placed in the cooler; it does not include packing, loading, grading, or shipping. *Fleming v Swift & Co.* (DC III) 41 F Supp 825, aff'd (CA7) 131 F2d 249.

[377]

drifting. Moving with the wind. The movement of cattle undirected by man, often prompted by weather conditions. In mining parlance, taking earth, gravel, or ore from a position made accessible by means of a tunnel. It is not the same as running a tunnel, which is construction work. *Jurgenson v Diller*, 114 Cal 491, 493, 46 P 610.

driftland. An annual tribute paid by certain tenants for the privilege of driving their cattle through a manor.

drift of the forest. A driving together of all the cattle in a forest at certain stated periods for much the same purposes as those of a modern "round-up" in the western parts of the United States.

driftway. A common way for driving cattle. *Swenson v Marino*, 306 Mass 582, 29 NE2d 15, 130 ALR 763.

driller's lien. A special lien to a person contributing labor or materials toward the drilling of a gas and oil well. 24 Am J1st Gas & O § 114.

drilling. Making a hole in wood, metal, or other substance; penetrating the earth for oil or gas; preparing a cavity in a tooth for a filling.

See **turn key job**.

drilling fluid. See **rotary drilling**.

drill stem. See **rotary drilling**.

drink. A liquid beverage of any kind, except as the context in which the word appears indicates an alcoholic beverage. 30 Am J Rev ed Intox L § 8. The portion of an alcoholic beverage consumed at one time. A court will take judicial notice that a "drink" of intoxicating liquor is less than one quart in volume. *Sappington v Carter*, 67 Ill 482, 485.

As used in a town ordinance prohibiting the sale of "drinks" on Sunday, the word was held to include any soft drink usually sold as a beverage, but not to include water, coffee, tea, milk or anything not classed as a beverage. Coca-cola was held to be among the prohibited potations. *State v Weddington*, 188 NC 643, 125 SE 257, 37 ALR 573.

drinkable. Literally, capable of being drunk, but more practicably, suitable for drinking, that is, potable. Anno: 11 ALR 1237.

drinks. See **drink**.

drip. The falling of rain-water from the eaves of house.

See **eaves-drip**.

drive. To compel, urge, or control movement some manner or direction, for example, a team horses or a herd of cattle. *Howell v J. Mandelbau & Sons*, 160 Iowa 119, 122, 140 NW 397.

See **driving a motor vehicle**.

drive-in. A development of the automobile age, wherein a business, such as a bank, a lunch room, a confectionery, or an ice cream vendor, serves its customers in their automobiles driven upon the premises.

drive-in theater. A place of entertainment, peculiar in the fact that the patrons drive their automobiles into an enclosure within good view of the screen or stage and view the picture or performance from their seats in the vehicle.

drive-it-yourself system. The business of renting out motor vehicles without drivers. 13 Am J2d Car § 18.
See **renting automobiles.**

drive other cars clause. A clause in an automobile liability policy which protects the named assured in using an automobile other than the one described in the policy. 7 Am J2d Auto Ins § 105.

driver's license. See **operator's license.**

driver's training. Instruction in driving an automobile, obtained as a preliminary to the test for a license or required under a judgment rendered in a prosecution for violation of the Motor Vehicle Law.

driving a motor vehicle. Controlling the motive power. Commonwealth v Crowninshield, 187 Mass 221, 72 NE 963. More precisely, controlling the motive power or movement of a motor vehicle in motion, albeit the movement be only a few feet. 7 Am J2d Auto § 256.

See **driving while intoxicated; operating motor vehicle; reckless driving.**

driving range. An area, usually a part of a regular golf course, wherein golfers may practice driving the ball.

driving while intoxicated. A criminal offense, known in some jurisdictions as drunken driving, or driving while under the influence of intoxicating liquor or of drugs, the elements of which are the control of a motor vehicle by the accused while it is in movement under power within his control, and while the accused is intoxicated, in an intoxicated condition, under the influence of intoxicating liquor, intoxicated or in any degree under the influence of intoxicating liquor, the statutes varying in the terms which describe the condition of the driver contemplated by the legislature in determining the nature of the conduct to be proscribed. 7 Am J2d Auto §§ 253 et seq.

See **operation of motor vehicle while intoxicated.**

drofland. Same as **driftland.**

droit. (French.) A right. Opel v Shoup, 100 Iowa 407, 69 NW 560.

droit administratif. The French system of administrative law based upon the principle of freedom of administrative action in the determination of causes growing out of the relationship of government to individuals. 1 Am J2d Admin L § 9.

droit common. The common law.

droit d'accroissement. The right of survivorship.

droit d'ainesse. A birthright.

droit d'aubaine. The right of a stranger,—the right assumed and exercised by the French government of seizing and confiscating all of the real and personal property situate in France and belonging to an alien who dies in that country. Opel v Shoup, 100 Iowa 407, 69 NW 560.

See **jus albinatus.**

droit de corvees. A right to feudal service.

droit de déshérence. The right of escheat.

droit de deduction. (French.) A tax levied upon the removal from one country to another of property acquired by succession or testamentary disposition. 28 Am J Rev ed Inher T § 36. A survival from medieval European law. *Melson v Johnson*, 279 US 47, 73 L Ed 607.

[378]

droit d'eignesse. The right of the eldest.

droit des gens. (French.) The law of nations; international law.

droit de suit. A person's right to pursue the property of his debtor in the hands of a third party; stoppage in transitu.

See **stoppage in transitu.**

droit d'execution. The right of a broker to sell what he has bought for his principal for the account of his principal after the latter has refused to accept delivery.

droit droit. A double right consisting of the right of possession joined with the right of property. It is an ancient maxim of the law that no title is completely good without this double right. See 2 Bl Comm 199.

droit écrit. The written law,—statute law.

droit international. International law.

droit ne done plus que soil demaunde. The law gives no more than is demanded.

droit ne poet pas morier. Right cannot die.

droits civils. Civil or private rights.

droits of admiralty. The rights of the admiralty,—goods which have been abandoned found at sea; goods captured in time of war by a non-commissioned ship.

droitural. Concerning or pertaining to a person's right or title to property, as distinguished from his right to the possession of it.

droitural action. An action to recover land of which the plaintiff had lost both the possession and the right thereto.

drop letter. A letter posted for delivery by the local post office.

drover. A buyer of cattle for a distant market. A person taking cattle to market or in charge of cattle being taken to market.

drove road. A road where cattle may be driven.

drover's pass. A pass for free transportation on a railroad train of a person in charge of a shipment of livestock. The status of the person carried is that of a passenger for hire. 14 Am J2d Car § 756.

drug. Broadly defined, any substance used as a medicine or in the composition of medicine for internal or external use, including patent and proprietary remedies that possess or are reputed to possess curative or remedial properties. *Kelly v Carroll*, 36 Wash 2d 482, 219 P2d 79. Technically, articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; articles, other than food, intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any articles specified in the foregoing clauses. 21 USC § 321(G), a part of the Federal Food, Drug and Cosmetic Act.

See **Food, Drug, and Cosmetic Act; medicine; narcotics.**

druggist. Essentially a dealer in drugs, who acquires a professional standing by being licensed as a pharmacist, pharmaceutical chemist, a druggist, or an apothecary; one qualified by education and training to compound drugs and fill prescriptions. 25 Am J2d Drugs § 4. Narrowly defined, one who deals in uncompounded medicinal substances, vegetable, animal or mineral. *State v Holmes*, 28 La Ann 765.

druggists' liability insurance. A policy protecting a druggist against liability for injury or sickness resulting from malpractice, error, or mistake. 29A Am J Rev ed Ins § 1358.

drugless therapeutics. Hydrotherapy, dietetics, electrotherapy, radiography, sanitation, suggestion, or mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body, but in no way including the giving, prescribing or recommending of pharmaceutical drugs and poisons for internal use. *Kelly v Carroll*, 36 Wash 2d 482, 219 P2d 79, 19 ALR2d 1174.

drum. An instrument played as one of the instruments of a band or orchestra, being so constructed as to present a taut membrane to be beaten by a small stick, known as a drumstick. A container in the shape of a keg or barrel, usually made of steel, and used for holding explosive or inflammable liquids.

drumhead court-martial. A summary military trial.

drummer. A musician whose instrument is a drum. A traveling salesman in the sense of one who solicits order but carries no stock, except samples, and makes no deliveries. *Re Wilson (Dist Col)* 8 Mackey 341; *Thomas v Hot Springs*, 34 Ark 553.

drunk. One in a state of drunkenness; a drunkard; an habitual drunkard.

See **drunkard; habitual drunkard; drunkenness.**

drunkard. A person given to inebriety and the excessive use of intoxicating liquor, who has lost the power or will, by frequent indulgence, to control his appetite for it. 29A Am J Rev ed Ins § 1230. The definition is sometimes extended to include excessive use of either intoxicating liquor or narcotics. *Re House*, 23 Colo 87, 46 P 117.

See **habitual drunkard.**

drunken driving. See **driving while intoxicated.**

drunkenness. That state or condition of a person which inevitably follows from taking excessive quantities of an intoxicant, meaning to some men the condition of being under the influence of an intoxicant to such an extent as to render one helpless, to others a lesser degree of effect, even a slight influence. 30 Am J Rev ed Intox L § 21.

See **habitual drunkenness; intoxication.**

drunk-o-meter. An instrument to determine the intoxication or extent of intoxication by exposing the breath to chemicals, thereby determining the amount of alcohol in the system. *Hill v State*, 158 Tex Crim 313, 256 SW2d 93.

dry. Want of moisture. A term applied to one who is opposed to traffic in alcoholic beverages and advocates legislation and strict law enforcement to put an end to it. *State v Shumaker*, 200 Ind 623, 157 NE 769, 58 ALR 954.

dry-craeft. Witchcraft.

dry dock. A watertight dock provided with machinery for pumping out the water in order that a

[379]

docked vessel may be repaired. *Maryland Casualty Co. v Lawson* (CA5 Fla) 101 F2d 732. All injuries suffered by the hulls of vessels below the water line by collision or stranding must necessarily be repaired in a dry dock, to prevent the inflow of water. While the vessel is in such a dock, she is not on land and is within the jurisdiction of the admiralty court. *Perry v Haines*, 191 US 17, 33, 48 L Ed 73, 80, 24 S Ct 8.

See **graving dock**.

dry exchange. A pretended exchange of property employed to conceal a transaction which was in fact usurious.

dry gas. Gas produced by an oil well, from which the gasoline has been removed, thereby rendering it fit for use for the purposes of heat and power. *Standard Oil Co. v United States* (CA9 Cal) 107 F2d 402.

dry goods. Textiles; cloth. *Levy v Friedlander*, 24 La Ann 439, 441.

Sometimes considered broadly as including everything in a stock of general merchandise, except groceries.

dry law. A statute prohibiting the manufacture, sale or other disposition of intoxicating liquors.

dry mortgage. A mortgage containing a provision that there shall be no personal liability on the part of the mortgagor for the payment of the obligation secured by the mortgage, beyond the value of the mortgaged property. *Frowenfeld v Hastings*, 134 Cal 128, 66 P 178.

dry rent. Rent seck,—a rent reserved by deed, without the covenant or clause of distress. 32 Am J1st L & T § 1040.

dry territory. A term peculiar to liquor law, having reference to a county or lesser political subdivision in which, by virtue of local option, the traffic in intoxicating beverages is prohibited.

dry trust. A trust in which the trustee has no duties to perform, and in which the cestui que trust has the entire management of the estate. 54 Am J1st Trusts § 13. A voting trust of corporate stock in which the trustees have no beneficial interest and concerning which they have no duties other than to vote the stock. Anno: 98 ALR2d 387 § 9.

See **passive trust**.

d/s. An abbreviation of day's sight, as used in negotiable instruments. Thus, 30 d/s would mean 30 days after sight.

d. s. b. Abbreviation of **debitum sine breve**.

d. s. b. judgment. An abbreviation of judgment debitum sine brevi.

D. Sc. Abbreviation of Doctor of Science.

D. S. T. Abbreviation of daylight saving time.

dual agency. A situation where an agent is acting for both parties to a transaction. 29 Am J Rev ed Ins § 140. A reprehensible practice in acting for both parties to a transaction, without disclosing the dual representation to both parties. 3 Am J2d Agency § 233.

dual citizenship. A status long recognized in law as existing where a person is claimed as a subject or citizen of two states. The concept recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. 3 Am J2d Aliens § 118. One nation may claim his allegiance because of his birth within its territory, and the other demand it because at the time of his birth in foreign territory his parents were its nationals. *Perkins v Elg*, 307 US 325, 83 L Ed 1320, 59 S Ct 884.

dual nationality. See **dual citizenship**.

duarchy. A government with two rulers.

Duas uxores eodem tempore habere non licet. It is unlawful to have two wives at the same time. See 1 Bl Comm 436.

Duas uxores eodem tempore habere non potest. A man cannot have two wives at the same time.

dub. An abbreviation of **dubitat**,—it is doubted. To confer a title, a name, or a nickname.

dubii juris. Of doubtful right or law.

dubitans. Doubting.

dubitante. Doubting.

dubitatur. It is doubted; it is doubtful.

dubitavit. He has doubted; he doubted.

duces tecum. Bring with you.

See **subpoena duces tecum**.

duces tecum licet languidus. A writ which lay to bring a person into court notwithstanding his illness.

duchy court of Lancaster. A court of equity of special jurisdiction in cases relating to lands held of the king in right of the Duchy of Lancaster.

Ducitur in absurdum. It is led into absurdity. *Nichols v Fearson* (US) 7 Pet 103, 110, 8 L Ed 623, 626.

ducking stool. Also called a cucking stool. A stool or chair upon which a defendant was placed to be plunged three times in the water as a punishment under the early common law for the offense of being a common scold. 15 Am J2d Comm S § 3.

due. Owing; payable. *The United States v State Bank of North Carolina* (US) 6 Pet 29, 36, 8 L Ed 308, 311; *Allen v Patterson*, 7 NY 476; currently payable. 6 Am J2d Attach § 264. Fitting; suitable.

due bill. An acknowledgment of a debt in writing. *Erickson v Sophy*, 10 SD 71, 74, 71 NW 758.

due care. Care according to the circumstances of the case. 38 Am J1st Negl § 29. That degree of care which a man of ordinary prudence would exercise in similar circumstances. *Gahagan v Boston & Maine Railroad*, 70 NH 441, 50 A 146. As the term appears in an exception from the risk in an accident insurance policy, it means the measure of caution and care that would be required of a reasonably prudent man in like circumstances. 29A Am J Rev ed Ins § 1160.

See **due diligence; ordinary care; reasonable care.**

due compensation. Just compensation; the compensation to which a person is entitled. As the term is used in the law of eminent domain, it means the compensation which ought to be made; that is, compensation which will make the owner whole pecuniarily for the appropriation or injury of his property by an invasion of it cognizable by the senses, or by interference with some right in relation to property whereby its market value is lessened as the direct result of the public use. *King v*

[380]

Vicksburg Railway & Light Co. 88 Miss 456, 42 So 204.

due consideration. Giving such thought or weight to a fact as it merits under all the circumstances of the case. *New York Tel. Co. v James*, 309 NY 569, 132 NE2d 850.

due course. The ordinary course of events; not highlighted by unusual or extraordinary events.

See **holder in due course.**

due course holder. Same as **holder in due course.**

due course of justice. The due course of proceedings in the administration of justice, whether leading to a judgment for the plaintiff or a judgment for the defendant, whether to an acquittal or conviction. 39 Am J1st Obst J § 1.

due course of law. According to the law of the land; due process of law. *Hanson v Krehbiel*, 68 Kan 670, 75 P 1041.

See **due process of law; remedy by due course of law.**

due course of trade. In the ordinary course of business. The circumstances attendant upon a transaction in the ordinary course of business, such as a sale and payment of the price contemporaneously.

due course of transit. Property being carried with the intent to deliver it at a specific destination. Anno: 80 ALR2d 447.

See **deviation from route.**

due course payment. See **payment in due course.**

due date. The date on which a promissory note or other obligation, by its terms, falls due.

due-days. Same as **boom-days.**

due diligence. Constancy or steadiness of purpose or labor by men who desire a speedy accomplishment of their purposes and such assiduity in the prosecution of the enterprise as manifest to the world a bona fide intention to complete the task within a reasonable time. *Ophir Silver Mining Co. v Carpenter*, 4 Nev 534. In reference to conduct negating negligence or contributory negligence, that amount of diligence which a reasonable and prudent man would exercise under the circumstances. *Perry v Cedar Falls*, 87 Iowa 315, 316. As a prerequisite to a continuance on the ground of the absence of a witness, due diligence in attempting to procure the attendance of the witness means that a party avail himself of the means provided by law, when practicable, to force the attendance of the witness. *Fritsch v J. M. English Truck Line, Inc.* 151 Tex 168, 246 SW2d 856.

See **due care**.

due east. A compass point, directly east. 23 Am J2d Deeds § 248.

due in advance. A clause used in loan contracts, requiring payment of interest in advance. 30 Am J Rev ed Int § 12.

duel. A combat with deadly weapons between two persons, according to the terms of a precedent agreement and under certain agreed and prescribed rules. *Ward v Commonwealth*, 132 Ky 636, 116 SW 786; *Griffin v State*, 100 Tex Crim 641, 274 SW 11. A criminal offense under modern law. 25 Am J2d Duel § 1.

duelling. Fighting a duel.

See **duel**.

duello. A duel.

duellum. A duel.

due north. A compass point, directly north. 23 Am J2d Deeds § 248.

due notice. Sufficient notice. The notice prescribed by law in the case of where notice is prescribed. Where a statute requires notice to be given, it is the general rule of law that actual personal notice is required, and the notice must be personally served on the person to be notified. 39 Am J1st Notice § 9. Due notice of a trial upon charges made against a person, means that he is to be put upon trial at a specified time upon specified charges; and the notice must be given in season to afford him a reasonable opportunity to make preparation to meet the charges by summoning witnesses in his behalf. *Brennan v United Hatters of North America*, 73 NJL 729, 65 A 165.

See **due process of law; due publication**.

due process. See **due process of law**.

due process of law. A phrase impossible of precise definition; one which asserts a fundamental principle of justice rather than a specific rule of law. 16 Am J2d Const L § 545. Law in the regular course of administration through courts of justice according to those rules and forms which have been established for the protection of private rights. *Endicott-Johnson Corp. v Smith*, 266 US 291, 69 L Ed 293, 45 S Ct 63.

"Due process of law" implies and comprehends the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights, and in a competent tribunal possessing jurisdiction of the cause and proceeding by hearing upon notice. *State ex rel. Sweezer v Green*, 360 Mo 1249, 232 SW2d 897, 24 ALR2d 340. "Due process of law" requires in each case an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims, and on a judgment not ad hoc and episodic but duly mindful of reconciling the needs both of continuity and of change in any progressive society. *Rochin v California* 342 US 165, 96 L Ed 183, 72 S Ct 205, 25 ALR2d 1396.

One of the most famous and perhaps the most often quoted definition of "due process of law" is that given by Daniel Webster in his argument in the Dartmouth College case (*Dartmouth College v Woodward* (US) 4 Wheat 518, 4 L Ed 629), wherein he declared that by due process of law is meant "the law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.

See **day in court; deprivation without due process; hearing; law of the land; life, liberty and property; life, liberty and the pursuit of happiness**.

due proof. Sufficient proof.

See **due proof of loss; sufficient evidence.**

due proof of loss. As required by an insurance policy, reasonable and satisfactory proof; a proof which makes out a prima facie case against the insurer by furnishing information which is substantial and trustworthy enough to enable the insurer to form an intelligent estimate. 29A Am J Rev ed Ins § 1403. Evidence proper in form and sufficient in character to indicate the truth of the facts stated and to show the happening of the event upon which the insurer agreed to pay the loss or claim. *Howe v National Life Ins. Co.* 321 Mass 283, 72 NE2d 425, 170 ALR 1254.

[381]

due publication. A publication in the manner and form and for the time required by law. *Laugel v Bushnell*, 197 Ill 20, 63 NE 1086.

due regard. See **due consideration.**

due regard for the safety of others. See **due care.**

dues. Annual or other regular payments made by a member of an association, club, society, or fraternal order. The sums of money which a member of a mutual benefit society or benevolent association must pay toward the support of the society in order to retain his membership therein. 36 Am J2d Frat O § 80. The term has been used in the unusual sense of contract obligations, even liability for torts. *Whitman v National Bank of Oxford*, 176 US 559, 44 L Ed 587, 590, 20 S Ct 477.

due south. A compass point, directly south. 23 Am J2d Deeds § 248.

due to conditions of employment. A phrase in a workmen's compensation statute which serves to emphasize the necessity for a causal relationship between the employment and the injury. 58 Am J1st Workm Comp § 209.

due west. A compass point, directly west. 23 Am J2d Deeds § 248.

duke. A leader; an English hereditary title which is next in rank below that of a prince.

dulocracy. A government by slaves.

duly. The word has acquired a fixed legal meaning, and when used before any word implying action, it means that the act was done properly, regularly, and according to law. It is often used before such words as "convened," "arrested," "qualified," "served," "presented," "discharged," and many others, and in such cases it has the meaning of the word "legally" or "properly," "according to law." *O'Donnell v People*, 224 Ill 218, 79 NE 639. Citing Am & Eng Encyc of Law.

duly adjudged. Adjudged according to law,—that is, according to the statute governing the subject, and implying the existence of every fact essential to perfect regularity of procedure, and to confer jurisdiction both of the subject matter and of the parties affected by the judgment. Any step in the cause before the court is necessarily the exercise of jurisdiction, and that step cannot be "duly" taken unless jurisdiction exists. The final step—in particular, the making of the judgment—cannot be "duly" taken unless all of the preliminary steps upon which it is based have likewise been "duly" taken. *Brownell v Greenwich*, 114 NY 518, 22 NE 24.

duly authorized agent. An agent with authority either express or implied to act in a particular situation, for example, the receiving of notice or proof of loss. 29A Am J Rev ed Ins § 1398.

duly negotiated. Commercial paper transferred from one person to another in such manner and form that the transferee becomes the holder thereof. Uniform Negotiable Instruments Act § 30. The negotiation of a negotiable document of title in the manner stated in the Uniform Commercial Code to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing, or that it involves receiving the document in settlement or payment of a money obligation. UCC § 7-501(4).

duly performed. Fully performed. In some jurisdictions, where the statute permits a party in a contract action to allege generally that he has "duly performed" all of the conditions on his part, if he would avail himself of this provision, he must comply strictly with the statute, and the omission of the word "duly" would seem fatal. Accordingly, a substitution of the word "substantially" for the word "duly" was held to be an insufficient allegation of performance. *Lusk Lumber Co. v Independent Producers Consol.* 35 Wyo 381, 249 P 790.

duly recorded. The term not only imports that the instrument has been filed for record and copied in the proper record book of the registrar, but also that it was in form and substance an instrument which was by law entitled to be recorded. See *Marden v Dorthy*, 160 NY 39, 54 NE 726.

duly sworn. Having been put under oath, before an officer authorized to administer oaths, in the manner and form required by law. *Garner v State*, 28 Fla 113. An allegation that one did depose and swear is not the equivalent of alleging that being "duly sworn," he did depose and say. A man may depose as well before an oath has been administered to him as afterwards. Likewise a person may "swear" who is not duly sworn. *United States v M'Conaughy* (DC Or) 33 F 168, 169.

See **swear**.

dum. While; as long as; in so far as.

dumb. Lacking the power of speech. Mute. Such disability is not one of mental incapacity. A colloquial expression for stupid.

dumb-bidding. Bidding at an auction sale where all bids below a previously arranged secret figure are to be rejected by the auctioneer.

dum bene se gesserit. As long as he should well behave himself,—during good behavior. 43 Am J1st Pub Of § 156.

dumboc. Same as **Dome Book**. See 1 Bl Comm 46.

dumb person. See **deaf mute; dumb**.

dumb waiter. A small elevator or lift in a house for sending food, laundry, trash, etc. from one floor to another. A serving table.

dum fervet opus. While the work is going on; during the transaction.

dum fait infra aetatem. While he was under age.

dum fait in prisons. While he was in prison,—a writ to recover land conveyed under duress of imprisonment.

dum fait non compos mends suae, ut dicit. While he was of unsound mind, as he says. See 2 Bl Comm 291.

dummodo. Provided; provided that.

dummodo constat de persona. Provided that it is clear as to the person.

dummy. One posing or represented as acting for himself, but in reality acting for another; a tool or straw man for the real parties in interest.

dummy corporation. A corporation organized and acting ostensibly as a corporation, but in reality having no real corporate purpose, having been organized with the motive of avoiding personal liability on the part of the incorporator and sole

[382]

stockholder. *Chesapeake Stone Co. v Holbrook*, 168 Ky 128, 181 SW 953.

dummy director. A person who, although nominally a director of a corporation is a mere figurehead and discharges no duties. *Goldenrod Mining Co. v Bukvich*, 108 Mont 569, 92 P2d 316. A person to whom a share of stock in a corporation is transferred in order to qualify him as a director. *Hoopes v Basic Co.* 69 NJ Eq 679, 61 A 979.

dummy engine. A small railroad locomotive used only in the yards of a railroad or on the tracks of an industrial plant, sometimes having a muffled exhaust. *Birmingham Mineral Railroad Co. v Jacobs*, 92 Ala 187, 9 So 320.

dum non fuit compos mentis. While he was of unsound mind.

dump. Noun: The place where the accumulated refuse of a city or center of population is dumped. *Bruce v Kansas City*, 128 Kan 13, 276 P 284, 63 ALR 325. Verb: To throw away; to unload in a heap, as rubbish.

See **dumping; mine dump.**

dumping. The sale in the United States of foreign merchandise at less than its fair value. 21 Am J2d Cost D § 15. Cutting the price of merchandise for a quick sale. Unloading a truck filled with heavy material such as coal or ore; unloading refuse at a dump.

See **dump.**

Dumpor's Case. An old English case from which there was developed the rule that once the condition upon which an estate was granted is waived and therefore gone, it is gone forever. 28 Am J2d Est § 169.

dump truck. A truck equipped so that the power of the motor can be applied to unloading the vehicle by raising the front end of the body, thereby permitting the contents of the load to slide out. A motor vehicle. Anno: 77 ALR2d 948.

dum recens fuit maleficium. While the offense was fresh or recent.

dum sola. While unmarried.

dum sola et casta vixerit. While she shall live unmarried and chaste.

dun. A statement of account with request for payment.

See **bum-baliff.**

dunces. See **parliament of dunces.**

dungeon. An underground prison or cell of a prison.

dunnage. Material for the packing or shoring of a ship's cargo. 21 Am J2d Cust D § 49. Chips, planks boughs, and other pieces of wood placed in the bottom of the hold of a vessel to keep the cargo above the water which collects in the hold. Materials used to steady the cargo and prevent one part from rubbing against another. *Great Western Insurance Co. v Thwing* (US) 13 Wall 672, 20 L Ed 607.

duodecemvirale iudicium. A trial by twelve men, a trial by jury.

duodecima manus. The twelfth hand; twelve hands. The term was used to refer to the twelve right hands of the eleven compurgators and the defendant himself which were raised when the twelve were sworn in a trial by wager of law. See 3 Bl Comm 343.

duodena. A jury composed of twelve men.

duodenitis. A bodily ailment consisting of the stricture or obstruction of the duodenum, sometimes caused by an external physical injury, such as a fall or a twisting of the body, and often causing death. See *United States Mutual Accident Association v Barry*, 131 US 100, 109, 33 L Ed 60, 64, 9 S Ct 755.

duo non possunt in solido unam rem possidere. Two persons cannot each possess one thing exclusively.

duorum in solidum dominium vel possessio esse non potest. Sole ownership or possession cannot be in two persons.

duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas,—ratio et auctoritas. There are two instrumentalities for the confirmation or repudiation of all things,—reason and authority.

duplex. A dwelling or apartment house consisting of two family units. One of the units of a two-family house or apartment.

duplex querela. A double complaint; an appeal from an ordinary to his next superior, as from the decision of a bishop to an archbishop. See 3 Bl Comm 247.

duplex valor maritagii. Double the value of the maritagium. The amount of the penalty which a ward had to pay if he married without his guardian's consent and thus cut off the guardian's maritagium. See 2 Bl Comm 70.

duplicate. Verb: To make an exact copy or double of something. Noun: The double of anything. *Lorch v Page*, 97 Conn 66, 115 A 681, 24 ALR 1204, 1206. An instrument, sometimes called a duplicate original, of exact identity with another instrument, executed as an original the same as the other instrument, and having all the legal effect of an original. Anno: 24 ALR 1209; 17 Am J2d Contr § 284; 50 Am J1st Stat § 289. The most significant distinction between a mere copy and a duplicate or duplicate original is that the best evidence rule, which applies to a copy does not apply to a duplicate. 29 Am J2d Ev § 487. The better view is that the different numbers or impressions of a writing produced by placing carbon paper between sheets of paper and writing upon the exposed surface are duplicate originals, of which any may be introduced in evidence without accounting for the nonproduction of the others. *Maston v Glen Lumber Co.* 65 Okla 80, 163 P 128; 29 Am J2d Ev § 488.

duplicate bill. See **bills in a set; duplicate bill of lading; duplicate paper.**

duplicate bill of lading. An extra copy of a bill of lading made for the convenience and information of consignor or consignee, which, under statute, must bear the word "duplicate" or some other word or words appropriate to show that the document is not an original bill. 13 Am J2d Car § 268.

duplicate paper. A substitute for a negotiable instrument which has been lost, destroyed, or mutilated. 11 Am J2d B & N § 59.

See **bills in a set.**

duplicate taxation. Same as **double taxation.**

[383]

duplicate will. A will which has been executed in duplicate so that the two copies can be placed in the hands of different persons. 57 Am J1st Wills § 495.

See **double wills; reciprocal wills.**

duplicatio. A Roman law pleading corresponding to the common-law rejoinder, being the defendant's reply to the actor's replicatio. See 3 Bl Comm 310.

See **rejoinder.**

duplication. The making of a duplicate. In admiralty, a pleading replying to the replication of the defendant.

duplicationem possibilitatis lex non patitur. The law does not permit the doubling of a possibility.

duplicatum jus. A double right.

duplicem valorem maritagii. See **duplex valor maritagii.**

duplicitous. See **duplicity; duplicity in indictment or information; duplicity in pleading.**

duplicity. Deception, particularly in double dealing.

See **duplicity in indictment or information; duplicity in pleading.**

duplicity in indictment or information. Charging two different and distinct offenses in one count. *Frohwerk v United States*, 249 US 204, 63 L Ed 561, 39 S Ct 249; 27 Am J1st Indict § 124.

duplicity in pleading. A defect in pleading as in violation of the rules which tend to produce singleness or unity in the issue. A declaration, complaint, or petition is duplicitous where it joins in one and the same count different grounds of action of different natures or of the same nature, to enforce a single right of recovery; or where it is based on different theories of the defendant's liability. A plea or answer is bad for duplicity if it contains more than one independent fact, or set of facts, any of which alone is a sufficient answer to the declaration, complaint, or petition, and this, whether the defense is in abatement, in bar, or both. 41 Am J1st Pl §§ 44, 45.

See **duplicity in indictment or information.**

duplo. See **in duplo.**

duply. A Scotch pleading corresponding to the rejoinder of the common law, being the same as the Roman law *duplicatio*.

dura lex scripta tamen. Harsh though it be, the law is thus written. *Landry v American Creosote Works*, 119 La 231, 43 So 1016.

durante. During; pending.

durante absentia. See **administration durante absentia; administrator of absentee.**

durante animo vitio administrator. See **administrator animo vitio.**

durante bene placito. During the pleasure. Before the statute 13 William 111, c. 2, the judges of the superior courts held their offices at the pleasure of the king. See 1 Bl Comm 267. It seems also that a sheriff might be appointed during the pleasure of the king. See 1 Bl Comm 342.

durante furore. During the period of a person's insanity.

durante itinere. During the time when a person is on a journey.

durante minore aetate. During the age of minority.

durante minoritate administrator. See **administrator durante minoritate administratoris.**

durante minoritate administratoris. See **administrator durante minoritate administratoris.**

durante viduitate. During widowhood, while she was a widow. See 2 Bl Comm 124.

durante virginitate. During virginity,—during the time a woman remains unmarried.

durante vita. During a person's lifetime.

duration. The period of existence, *People v Hill*, 7 Cal 97; continuance in time; the portion of time during which anything exists. Hence, a statute providing that a session should be "limited to sixty days' duration" means sixty days counting one after another, including Sundays, holidays, and any days of temporary adjournment. *Cheyney v Smith*, 3 Ariz 143, 23 P 680.

duration of risk. The extent of time within which the losses covered by a policy of insurance must occur in order for the insurer to be liable. 29 Am J Rev ed Ins § 317. The period of time between the effective date of the policy and the termination of the risk by expiration of the period of coverage, cancellation of the policy, or breach of condition.

duration of war. In a legal sense the period continuing to and terminating at the time of a formal proclamation of peace by competent authorities; in common usage by laymen, the period of time terminating on the cessation of actual hostilities. When such term is used in a contract the meaning to be attributed is one of intent of the parties to be determined upon the consideration of the instrument itself and evidence produced as to the circumstances surrounding its execution and the purposes which the party sought to accomplish. *Malbone Garage v Minkin*, 272 App Div 109, 72 NYS2d 327, affd 297 NY 677, 76 NE2d 331.

duress. Any wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition. Compulsion or restraint by which a person is illegally forced to do, or forbear from doing, some act. 25 Am J2d Dur § 1. A species of fraud in which compulsion in some form takes the place of deception. 25 Am J2d Dur § 1. As a defense in a criminal prosecution, a present, imminent, and impending coercion of such a nature as to induce a well-grounded apprehension of death or serious bodily injury if the act is not done. 21 Am J2d Crim L § 100.

The existence of duress is to be determined by the subjective standard of whether the free will of the victim was, rather than whether that of a person of ordinary courage and firmness would be, overcome thereby. *Wise v Midtown Motors*, 231 Minn 46, 42 NW2d 404, 20 ALR2d 735.

See **business compulsion; coercion; undue influence.**

duress by imprisonment. See **duress of imprisonment.**

duress by public utility. The exaction of a payment demanded for services under threat of terminating

[384]

service, thereby causing great injury to the property or business of the customer. 25 Am 12d Dur § 8.

duress by threat. See **duress per minas.**

duress of family. See **duress per minas.**

duress of goods. See **duress of property.**

duress of imprisonment. An arrest for improper purposes without just cause; an arrest for a just cause but without lawful authority; an arrest for a just cause and under lawful authority for an improper purpose; or ill treatment of a prisoner under imprisonment originally lawful. 25 Am J2d Dur § 4.

duress of property. The refusal of one in possession or control of property of another to surrender the possession or control of it to the owner except upon compliance with an unlawful demand. A contract made by the owner under such circumstances to emancipate the property is to be regarded as made under compulsion and duress and is voidable by the owner. 25 Am J2d Dur § 5. A contract procured by threats inducing fear of the destruction of one's property, and compelling him to act against his will may be avoided on the ground of duress, there being in such a case only the bare form of a contract, wholly lacking the voluntary assent necessary for a binding contract. *Cleaveland v Richardson*, 132 US 318, 33 L Ed 384, 10 S Ct 108.

duressor. A person who employs duress in his dealing with another.

duress per minas. Compulsion exercised by threat of imprisonment, mayhem, or taking of life or limb. 25 Am J2d Dur § 11. As defined at common law, such duress existed only where the party entered into a contract or performed an act for fear of imprisonment, mayhem, or loss of life or limb; threats or menace of mere battery to the person, or of trespass to lands or loss of goods were not sufficient to constitute such duress as to void obligations entered into because of such threats. 25 Am J2d Dur § 11. By many, if not most, of the modern authorities, however, the true doctrine of duress is held to be that a contract, deed, or any obligation obtained by so oppressing a person by threats regarding the safety or liberty of himself, or of his property, or of a member of his family, as to deprive him of the free exercise of his will and prevent the meeting of minds necessary to a valid contract, may be avoided on the ground of duress, whether the oppression was formerly deemed duress, and relievable at law as such, or was deemed wrongful compulsion remediable only in equity. 25 Am J2d Dur § 12.

Durham Test. A test of insanity constituting a defense in a criminal case, otherwise known as the "product test," which determines criminal responsibility on whether the unlawful act was the product of "mental disease or mental defect." 21 Am J2d Crim L § 39.

See **mental disease or mental defect.**

during. Throughout a period of time. A point of time within a period, as during the month of January, or during the widowhood of the grantee of a deed. *Glendale Mfg. Co. v Protection Ins. Co.* 21 Conn 19, 38.

during coverture. While marriage lasts. *State ex rel. Hamilton v Guinotte*, 156 Mo 513, 57 SW 281.

during good behavior. See **good behavior.**

during natural life. During the lifetime of a person.

See **Shelley's Case**.

during the hours of service. A period which includes the hours of active labor on the premises of the employer and the time necessary for going to and from the place of employment where the latter is expressly or impliedly included in the terms of the employment. Any period during which the employee was on the premises of the employer due to his employment. 58 Am J1st Workm Comp § 214.

during the term. During the time or period for which the officer is elected or appointed. State ex rel. Hamilton v Guinotte, 156 Mo 513, 57 SW 281. Within the period during which a tenant is entitled to possession under his lease.

during trial. See **trial**.

dusting. Spreading poisonous dust upon crops or land to control or eradicate pests. The operation is normally performed with the aid of an airplane. 3 Am J2d Agri § 47.

dustyfoot. See **courts of piepoudre**.

Dutch auction. An auction where the property is put up at a price usually greater than its value and the price is then gradually lowered until someone closes the sale by accepting the offer and thus becoming the purchaser. Anderson v Wisconsin C. R. Co. 107 Minn 296, 120 NW 39.

Dutch net. Also called a "pod net" or "pound net,"—a kind of fisherman's net so set with stakes as to form a large trap or weir for fish and from the pod or inner compartment of which they cannot escape. Rea v Hampton & Nichols, 101 NC 51.

dutiable. Subject to import duty.

duties. Obligations, whether imposed by the common law, statute, or contract; when a right is invaded, a duty is violated. Lake Shore & Michigan Southern Railway Co. v Kurtz, 10 Ind App 60, 67, 37 NE 303. A particular kind of levy or tax made by a government on the importation of commodities into the country. 21 Am J2d Cust D § 1. Not merely duties on the act of importation, but duties on the thing imported. Brown v Maryland (US) 12 Wheat 419, 6 L Ed 678.

See **customs duties**.

duties and imposts. As used in Clause 1, Section 8, Article I of the United States Constitution, a particular kind of tax commonly applied to levies on imports, but probably comprehending every species of tax or contribution not included under the ordinary terms "taxes" and "excises." Steward Mach. Co. v Davis, 301 US 548, 81 L Ed 481, 24 S Ct 305.

See **duties, imposts and excises**.

duties, imposts and excises. Words which are often used comprehensively and cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like, being, when so used, subject to construction under the rules that apply to license taxes. Thomas v United States, 192 US 363, 48 L Ed 481. One of the two great classes of taxes, the other being direct taxes, and the two, taken together, including every kind of tax appropriate to sovereignty.

See **customs duties; duties and imposts; excises; imposts**.

duties of detraction. Duties imposed on legacies payable to aliens and residents of other states. Mager v Grima (US) 8 How 490, 493, 12 L Ed 1168, 1170.

duties on imports. See **customs duties; duties.**

[385]

duties required of him by law. A common phrase appearing as a condition of the bond required of an executor or administrator, the effect of which is to extend the obligation to all duties in reference to the administration of the estate, including the payment of debts and the distribution of the remainder of the estate among those entitled to receive it. *Williams v State*, 68 Miss 680, 10 So 52.

duty. See **duties.**

duty of disclosure. See **duty to communicate.**

duty of support. A duty of supporting wife or child imposed or imposable by law, or by any court order, decree, or judgment, whether interlocutory or final, and whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise. Uniform Reciprocal Enforcement of Support Act § 2(f); 23 Am J2d Desert § 131. The obligation to support a parent or other relative imposed by statute. 39 Am J1st P & C § 122. The obligation to support a person under an agreement for support. 50 Am J1st Sup Per § 2.

duty of tonnage. See **tonnage duty.**

duty to communicate. An agent's duty to make a full disclosure to his principal of all material facts relevant to the agency; to make a prompt, full, and frank disclosure and account to the principal of all matters concerning the agency; to give the principal any information that the latter would desire to have and which can be communicated to him without violating a superior duty to a third person. 3 Am J2d Agency § 200. The duty to communicate criminatory matter to a person having a corresponding interest or duty, not confined to legal duties which may be enforced by indictment, action, or mandamus, but including moral and social duties of imperfect obligation as well. *Harrison v Bush*, 5 Ellis & Blackburn (Eng) 344.

duty to lessen damages. See **mitigation of damages.**

duty to retreat. See **retreat.**

duumviri. Two Roman magistrates possessing the same powers and functions who were elected or appointed as a pair.

dux. A chief; a leader.

D. V. M. Abbreviation of Doctor of Veterinary Medicine.

D. V. S. Abbreviation of Doctor of Veterinary Science.

dwell. To inhabit; to reside; to have a fixed place of residence. *Eatontown v Shrewsbury*, 49 NJL 188, 190.
See **dwelling; residence.**

dwelling. A place of abode for people. 43 Am J1st Pub Util § 183. A dwelling house. The act of inhabiting or residing in a place.
See **dwell; dwelling house.**

dwelling house. A building used as a place of abode for people. 43 Am J1st Pub Util § 183. A building suitable as a dwelling house, whether or not it is occupied at the time. 29A Am J Rev ed Ins § 904. For the purpose of the offense of arson, any house intended to be occupied as a residence, or a house in which human beings usually stay, lodge, or reside. 5 Am J2d Arson § 19. For the purpose of the crime of burglary, the apartment, room in a hotel, building, or cluster of buildings in which a man resides with his family, or any permanent building in which a person may dwell and sleep. 13 Am J2d Burgl § 3.

See **house; mansion house; residence.**

dwelling house of another. As the term is used in the law of arson, a dwelling house of which a person other than the accused is in possession; the person in possession may or may not be the owner. 5 Am J2d Arson § 39.

dwelling-place. See **dwelt; dwelling house.**

DWI. Abbreviation for driving while intoxicated.

Dyer Act. The National Motor Vehicle Theft Act of 1919, making it an offense to transport a motor vehicle in interstate or foreign commerce with knowledge that the same has been stolen or to receive, conceal, barter or sell a motor vehicle in interstate or foreign commerce, knowing the same to have been stolen. 7 Am J2d Auto § 305.

dying declaration. A declaration by the victim of a homicide or of an abortion resulting in the death of the woman, made while in extremis. 1 Am J2d Abort § 23. More precisely, a statement made by the victim of a homicide while about to die, and without any hope of recovery, concerning the facts and circumstances under which the fatal injury was inflicted, and offered in evidence on the trial of the person charged with having caused the death of the declarant. 26 Am J1st Homi § 385.

dying intestate. Dying without leaving a valid will. Also death without making an effective testamentary disposition. Bradford v Leake, 124 Tenn 312, 137 SW 96.

dying without issue. Dying without a child born either before or after the decedent's death. A term often appearing in devises of real estate, sometimes construed as meaning a definite failure of issue, that is no issue living at the time of the first taker's death, while other authorities construe the phrase as providing for an indefinite failure of issue, thereby invalidating the limitation on the ground of remoteness. 28 Am J2d Est § 272. Of course, the limitation is not evaluated according to its bare bones, the context of the entire instrument must be considered in determining whether the expression is one of a definite failure of issue or an indefinite failure of issue. 28 Am J2d Est § 272. Although it has been held that in executory bequests of personal estates any words in the will may be laid hold of to restrain the generality of the words "dying without issue" and confine them to a dying without issue living at the time of the person's decease, in order to support the intention of the testator, yet even in the limitation of personal estates, the words "dying without issue," standing alone, without the concurrence of any other circumstances indicating an intention of restricting them, will not signify a dying without issue living at the death of the first taker. 28 Am J2d Est § 273.

dying without leaving issue. See **dying without issue.**

dyke. Another spelling of **dike.**

dynamo. A device for converting mechanical energy into electricity by magnetic induction. Thomson-Houston Electric Co. v Western Electric Co. (CC Ill) 65 F 615, 616.

dynasty. A royal family succession to a throne or sovereignty.

dysnomy. Bad legislation; the enactment of unwarrantable laws.

dylvour. An insolvent person who had made an assignment of his property for the benefit of his creditors; a bankrupt.

dylvour's habit. The costume which the law prescribed to be worn by a dylvour.