

A P P E N D I X F

Dictionary of Legal Terms*

abatement Reduction or elimination of gifts by category upon the reduction in value of the estate.

absolute surety Surety liable to a creditor immediately upon the default of the principal debtor.

acceptance

Commercial paper Acceptance is the drawee's signed engagement to honor the draft as presented. It becomes operative when completed by delivery or notification. UCC §3-410.

Contracts Compliance by offeree with terms and conditions of offer.

Sale of goods UCC §2-606 provides three ways a buyer can accept goods: (1) by signifying to the seller that the goods are conforming or that he will accept them in spite of their nonconformity, (2) by failing to make an effective rejection, and (3) by doing an act inconsistent with the seller's ownership.

acceptor Drawee who has accepted an instrument.

accession An addition to one's property by increase of the original property or by production from such property. *E.g.*, A innocently converts the wheat of B into bread. UCC §9-315 changes the common law where a perfected security interest is involved.

accident and health insurance Provides protection from losses due to accident or sickness.

accommodation An arrangement made as a favor to another, usually involving a loan of money or commercial paper. While a party's intent may be to aid a maker of a note by lending his credit, if he seeks to accomplish thereby legitimate objects of his own and not simply to aid the maker, the act is not for accommodation.

accommodation indorser Signer not in the chain of title.

accommodation party A person who signs commercial paper in any capacity for the purpose of lending his name to another party to an instrument. UCC §3-415.

accord and satisfaction A method of discharging a claim whereby the parties agree to accept something in settlement, the "accord" being the agreement and the "satisfaction" its execution or performance. It is a new contract that is substituted for an old contract, which is thereby discharged, or for an obligation or cause of action and that must have all of the elements of a valid contract.

account Any account with a bank, including a checking, time, interest or savings account. UCC §4-194. Also, any right to payment, for goods or services, that is not evidenced by an instrument or chattel paper. *E.g.*, account receivable.

accounting Equitable proceeding for a complete settlement of all partnership affairs.

act of state doctrine Rule that a court should not question the validity of actions taken by a foreign government in its own country.

actual authority Power conferred upon agent by actual consent given by principal.

actual express authority Actual authority derived from written or spoken words of principal.

actual implied authority Actual authority inferred from words or conduct manifested to agent by principal.

actual notice Knowledge actually and expressly communicated.

actus reus Wrongful or overt act.

ademption The removal or extinction of a devise by act of the testator.

adequacy of consideration Not required where parties have freely agreed to the exchange.

adhesion contract Standard "form" contract, usually between a large retailer and a consumer, in which the weaker party has no realistic choice or opportunity to bargain.

adjudication The giving or pronouncing of a judgment in a case; also, the judgment given.

administrative agency Governmental entity (other than courts and legislatures) having authority to affect the rights of private parties.

administrative law Law dealing with the establishment, duties, and powers of agencies in the executive branch of government.

administrative process Entire set of activities engaged in by administrative agencies while carrying out their rulemaking, enforcement, and adjudicative functions.

administrator A person appointed by the court to manage the assets and liabilities of an intestate (a person dying without a will). A person named in the will of a testator (a person dying with a will) is called the executor. Female designations are administratrix and executrix.

adversary system System in which opposing parties initiate and present their cases.

adverse possession A method of acquiring title to real property by possession for a statutory period under certain conditions. The periods of time may differ, depending on whether the adverse possessor has color of title.

affidavit A written statement of facts, made voluntarily, confirmed by oath or affirmation of the party making it, and taken before an authorized officer.

affiliate Person who controls, is controlled by, or is under common control with the issuer.

affirm Uphold the lower court's judgment.

affirmative action Active recruitment of minority applicants.

affirmative defense A response that attacks the plaintiff's legal right to bring an action as opposed to attacking the truth of the claim. *E.g.*, accord and satisfaction; assumption of risk; contributory negligence; duress; estoppel.

affirmative disclosure Requirement that an advertiser include certain information in its advertisement so that the ad is not deceptive.

after-acquired property Property the debtor may acquire at some time after the security interest attaches.

agency Relation in which one person acts for or represents another by the latter's authority.

*Many of the definitions are abridged and adapted from *Black's Law Dictionary*, 5th edition, West Publishing Company, 1979.

Actual agency Exists where the agent is really employed by the principal.

Agency by estoppel One created by operation of law and established by proof of such acts of the principal as reasonably lead to the conclusion of its existence.

Implied agency One created by acts of the parties and deduced from proof of other facts.

agent Person authorized to act on another's behalf.

allegation A statement of a party setting out what he expects to prove.

allonge Piece of paper firmly affixed to the instrument.

annuity contract Agreement to pay periodic sums to insured upon reaching a designated age.

annul To annul a judgment or judicial proceeding is to deprive it of all force and operation.

answer The answer is the formal written statement made by a defendant setting forth the ground of his defense.

antecedent debt Preexisting obligation.

anticipatory breach of contract (or anticipatory repudiation) The unjustified assertion by a party that he will not perform an obligation that he is contractually obligated to perform at a future time. See UCC §§610 & 611.

apparent authority Such principal power that a reasonable person would assume an agent has in light of the principal's conduct.

appeal Resort to a superior (appellate) court to review the decision of an inferior (trial) court or administrative agency.

appeal by right Mandatory review by a higher court.

appellant A party who takes an appeal from one court to another. He may be either the plaintiff or defendant in the original court proceeding.

appellee The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. Sometimes also called the "respondent."

appropriation Unauthorized use of another person's name or likeness for one's own benefit.

appurtenances Things appurtenant pass as incident to the principal thing. Sometimes an easement consisting of a right of way over one piece of land will pass with another piece of land as being appurtenant to it.

APR Annual percentage rate.

arbitration The reference of a dispute to an impartial (third) person chosen by the parties, who agree in advance to abide by the arbitrator's award issued after a hearing at which both parties have an opportunity to be heard.

arraignment Accused is informed of the crime against him and enters a plea.

articles of incorporation (or certificate of incorporation) The instrument under which a corporation is formed. The contents are prescribed in the particular state's general incorporation statute.

articles of partnership A written agreement by which parties enter into a partnership, to be governed by the terms set forth therein.

as is Disclaimer of implied warranties.

assault Unlawful attempted battery; intentional infliction of apprehension of immediate bodily harm or offensive contact.

assignee Party to whom contract rights are assigned.

assignment A transfer of the rights to real or personal property, usually intangible property such as rights in a lease, mortgage, sale agreement, or partnership.

assignment of rights Voluntary transfer to a third party of the rights arising from a contract.

assignor Party making an assignment.

assumes Delegatee agrees to perform the contractual obligation of the delegator.

assumes the mortgage Purchaser of mortgaged property becomes personally liable to pay the debt.

assumption of risk Plaintiff's express or implied consent to encounter a known danger.

attachment The process of seizing property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the court

for the purpose of securing satisfaction of the judgment ultimately to be entered in the action. While formerly the main objective was to coerce the defendant debtor to appear in court, today the writ of attachment is used primarily to seize the debtor's property in the event a judgment is rendered.

Distinguished from execution See **execution**.

Also, the process by which a security interest becomes enforceable. Attachment may occur upon the taking of possession or upon the signing of a security agreement by the person who is pledging the property as collateral.

authority Power of an agent to change the legal status of his principal.

authorized means Any reasonable means of communication.

automatic perfection Perfection upon attachment.

award The decision of an arbitrator.

bad checks Issuing a check with funds insufficient to cover it.

bailee The party to whom personal property is delivered under a contract of bailment.

Extraordinary bailee Absolutely liable for the safety of the bailed property without regard to the cause of loss.

Ordinary bailee Must exercise due care.

bailment A delivery of personal property in trust for the execution of a special object in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract to either redeliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust.

bailor The party who delivers goods to another in the contract of bailment.

bankrupt The state or condition of one who is unable to pay his debts as they are, or become, due.

Bankruptcy Code The Act was substantially revised in 1978, effective October 1, 1979. Straight bankruptcy is in the nature of a liquidation proceeding and involves the collection and distribution to creditors of all the bankrupt's nonexempt property by the trustee in the manner provided by the Act. The debtor rehabilitation provisions of the Act (Chapters 11 and 13) differ from straight bankruptcy in that the debtor looks to rehabilitation and reorganization, rather than liquidation, and the creditors look to future earnings of the bankrupt, rather than to property held by the bankrupt, to satisfy their claims.

bargain Negotiated exchange.

bargained exchange Mutually agreed-upon exchange.

basis of the bargain Part of the buyer's assumption underlying the sale.

battery Unlawful touching of another; intentional infliction of harmful or offensive bodily contact.

bearer Person in possession of an instrument.

bearer paper Payable to holder of the instrument.

beneficiary One who benefits from act of another. See also **third-party beneficiary**.

Incidental A person who may derive benefit from performance on contract, though he is neither the promisee nor the one to whom performance is to be rendered. Since the incidental beneficiary is not a donee or creditor beneficiary (see **third-party beneficiary**), he has no right to enforce the contract.

Intended beneficiary Third party intended by the two contracted parties to receive a benefit from their contract.

Trust As it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

beyond a reasonable doubt Proof that is entirely convincing and satisfying to a moral certainty; criminal law standard.

bilateral contract Contract in which both parties exchange promises.

bill of lading Document evidencing receipt of goods for shipment issued by person engaged in business of transporting or forwarding goods; includes airbill. UCC §1-201(6).

Through bill of lading A bill of lading which specifies at least one connecting carrier.

bill of sale A written agreement, formerly limited to one under seal, by which one person assigns or transfers his right to or interest in goods and personal chattels to another.

binder A written memorandum of the important terms of a contract of insurance which gives temporary protection to an insured pending investigation of risk by the insurance company or until a formal policy is issued.

blue law Prohibition of certain types of commercial activity on Sunday.

blue sky laws A popular name for state statutes providing for the regulation and supervision of securities offerings and sales, to protect citizen-investors from investing in fraudulent companies.

bona fide In good faith.

bond A certificate or evidence of a debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time and to repay the loan on the expiration date. In every case, a bond represents debt—its holder is a creditor of the corporation, not a part owner, as the shareholder is.

boycott Agreement among parties not to deal with a third party.

breach Wrongful failure to perform the terms of a contract.

Material breach Nonperformance which significantly impairs the aggrieved party's rights under the contract.

bribery Offering property to a public official to influence the official's decision.

bulk transfer Transfer not in the ordinary course of the transferor's business of a major part of his inventory.

burglary Breaking and entering the home of another at night with intent to commit a felony.

business judgment rule Protects directors from liability for honest mistakes of judgment.

business trust A trust (managed by a trustee for the benefit of a beneficiary) established to conduct a business for a profit.

but for rule Person's negligent conduct is a cause of an event if the event would not have occurred in the absence of that conduct.

buyer in ordinary course of business Person who buys in ordinary course, in good faith, and without knowledge that the sale to him is in violation of anyone's ownership rights or of a security interest.

by-laws Regulations, ordinances, rules, or laws adopted by an association or corporation for its government.

callable bond Bond that is subject to redemption (reacquisition) by the corporation.

cancellation One party's putting an end to a contract because of a breach by other party.

capital Accumulated goods, possessions, and assets, used for the production of profits and wealth. Owners' equity in a business. Also used to refer to the total assets of a business or to capital assets.

capital surplus Surplus other than earned surplus.

carrier Transporter of goods.

casualty insurance Covers property loss due to causes other than fire or the elements.

cause of action The ground on which an action may be sustained.

caveat emptor "Let the buyer beware." This maxim is more applicable to judicial sales, auctions, and the like than to sales of consumer goods, where strict liability, warranty, and other laws protect.

certificate of deposit A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some other person or to his order. UCC §3-104(2)(c).

certificate of title Official representation of ownership.

certification Acceptance of a check by a drawee bank.

certification of incorporation See **articles of incorporation**.

certification mark Distinctive symbol, word, or design used with goods or services to certify specific characteristics.

certiorari "To be informed of." A writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein. It is most commonly used to refer to the Supreme Court of the United States, which uses the writ of certiorari as a discretionary device to choose the cases it wishes to hear.

chancery Equity; equitable jurisdiction; a court of equity; the system of jurisprudence administered in courts of equity.

charging order Judicial lien against a partner's interest in the partnership.

charter An instrument emanating from the sovereign power, in the nature of a grant. A charter differs from a constitution in that the former is granted by the sovereign, while the latter is established by the people themselves.

Corporate law An act of a legislature creating a corporation or creating and defining the franchise of a corporation. Also a corporation's constitution or organic law; that is to say, the articles of incorporation taken in connection with the law under which the corporation was organized.

chattel mortgage A pre-Uniform Commercial Code security device whereby the mortgagee took a security interest in personal property of the mortgagor. Such security device has generally been superseded by other types of security agreements under UCC Article 9 (Secured Transactions).

chattel paper Writings that evidence both a debt and a security interest.

check A draft drawn upon a bank and payable on demand, signed by the maker or drawer, containing an unconditional promise to pay a sum certain in money to the order of the payee. UCC §3-104(2)(b).

Cashier's check A bank's own check drawn on itself and signed by the cashier or other authorized official. It is a direct obligation of the bank.

C. & F. Cost and freight; a shipping contract.

C.I.F. Cost, insurance, and freight; a shipping contract.

civil law Laws concerned with civil or private rights and remedies, as contrasted with criminal laws.

The system of jurisprudence administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors, as distinguished from the common law of England and the canon law. The civil law (Civil Code) is followed by Louisiana.

claim A right to payment.

clearinghouse An association of banks for the purpose of settling accounts on a daily basis.

close corporation See **corporation**.

closed-ended credit Credit extended to debtor for a specific period of time.

closed shop Employer can only hire union members.

C.O.D. Collect on delivery; generally a shipping contract.

code A compilation of all permanent laws in force consolidated and classified according to subject matter. Many states have published official codes of all laws in force, including the common law and statutes as judicially interpreted, which have been compiled by code commissions and enacted by the legislatures.

codicil A supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain, or revoke provisions in an existing will. It must be executed with the same formalities as a will.

cognovit judgment Written authority by debtor for entry of judgment against him in the event he defaults in payment. Such provision in a debt instrument on default confers judgment against the debtor.

collateral Secondarily liable; liable only if the party with primary liability does not perform.

collateral (security) Personal property subject to security interest.

Banking Some form of security in addition to the personal obligation of the borrower.

collateral promise Undertaking to be secondarily liable, that is, liable if the principal debtor does not perform.

collecting bank Any bank, except the payor bank, handling the item for collection. UCC §4-105(d).

collective mark Distinctive symbol used to indicate membership in an organization.

collision insurance Protects the owner of an automobile against damage due to contact with other vehicles or objects.

commerce power Exclusive power granted by the U.S. Constitution to the federal government to regulate commerce with foreign countries and among the states.

commercial bailment Bailment in which parties derive a mutual benefit.

commercial impracticability Performance can only be accomplished with unforeseen and unjust hardship.

commercial law A phrase used to designate the whole body of substantive jurisprudence (e.g., Uniform Commercial Code; Truth in Lending Act) applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits. See **Uniform Commercial Code**.

commercial paper Bills of exchange (i.e., drafts), promissory notes, bank checks, and other negotiable instruments for the payment of money, which, by their form and on their face, purport to be such instruments. UCC Article 3 is the general law governing commercial paper.

commercial reasonableness Judgment of reasonable persons familiar with the business transaction.

commercial speech Expression related to the economic interests of the speaker and its audience.

common carrier Carrier open to the general public.

common law Body of law originating in England and derived from judicial decisions. As distinguished from statutory law created by the enactment of legislatures, the common law comprises the judgments and decrees of the courts recognizing, affirming, and enforcing usages and customs of immemorial antiquity.

community property Rights of a spouse in property acquired by the other during marriage.

comparable worth Equal pay for jobs of equal value to the employer.

comparative negligence Under comparative negligence statutes or doctrines, negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to amount of negligence attributable to the person for whose injury, damage, or death recovery is sought.

complainant One who applies to the courts for legal redress by filing a complaint (i.e., plaintiff).

complaint The pleading which sets forth a claim for relief. Such complaint (whether it be the original claim, counterclaim, cross-claim, or third-party claim) shall contain (1) a short, plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short, plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Fed.R. Civil P. 8(a). The complaint, together with the summons, is required to be served on the defendant. Rule 4.

composition Agreement between debtor and two or more of her creditors that each will take a portion of his claim as full payment.

compulsory arbitration Arbitration required by statute for specific types of disputes.

computer crime Crime committed against or through the use of a computer or computer/services.

concealment Fraudulent failure to disclose a material fact.

conciliation Nonbinding process in which a third party acts as an intermediary between disputing parties.

concurrent jurisdiction Authority of more than one court to hear the same case.

condition An uncertain event which affects the duty of performance.

Concurrent conditions The parties are to perform simultaneously.

Express condition Performance is contingent on the happening or non-happening of a stated event.

condition precedent An event which must occur or not occur before performance is due; event or events (presentment, dishonor, notice of dishonor) which must occur to hold a secondary party liable to commercial paper.

condition subsequent An event which terminates a duty of performance.

conditional acceptance An acceptance of an offer contingent upon the acceptance of an additional or different term.

conditional contract Obligations are contingent upon a stated event.

conditional guarantor of collection Surety liable to creditor only after creditor exhausts his legal remedies against the principal debtor.

confession of judgment Written agreement by debtor authorizing creditor to obtain a court judgment in the event debtor defaults. See also **cognovit judgment**.

confiscation Governmental taking of foreign-owned property without payment.

conflict of laws That branch of jurisprudence, arising from the diversity of the laws of different nations, states, or jurisdictions, that reconciles the inconsistencies, or decides which law is to govern in a particular case.

confusion Results when goods belonging to two or more owners become so intermixed that the property of any of them no longer can be identified except as part of a mass of like goods.

consanguinity Kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor.

consensual arbitration Arbitration voluntarily entered into by the parties.

consent Voluntary and knowing willingness that an act should be done.

conservator Appointed by court to manage affairs of incompetent or to liquidate business.

consideration The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. Some right, interest, profit, or benefit accruing to one party or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.

consignee One to whom a consignment is made. Person named in bill of lading to whom or to whose order the bill promises delivery. UCC §7-102(b).

consignment Ordinarily implies an agency; denotes that property is committed to the consignee for care or sale.

consignor One who sends or makes a consignment; a shipper of goods. The person named in a bill of lading as the person from whom the goods have been received for shipment. UCC §7-102(c).

consolidation In *corporate law*, the combination of two or more corporations into a newly created corporation. Thus, A Corporation and B Corporation consolidate to form C Corporation.

constitution Fundamental law of a government establishing its powers and limitations.

constructive That which is established by the mind of the law in its act of *construing* facts, conduct, circumstances, or instruments. That which has not in its essential nature the character assigned to it, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence, inferred, implied, or made out by legal interpretation; the word "legal" being sometimes used here in lieu of "constructive."

constructive assent An assent or consent imputed to a party from a construction or interpretation of his conduct; as distinguished from one which he actually expresses.

constructive conditions Conditions in contracts which are neither expressed nor implied but rather are imposed by law to meet the ends of justice.

constructive delivery Term comprehending all those acts which, although not truly conferring a real possession of the vendee, have been held by construction of law to be equivalent to acts of real delivery.

constructive eviction Failure by the landlord in any obligation under the lease that causes a substantial and lasting injury to the tenant's enjoyment of the premises.

constructive notice Knowledge imputed by law.

constructive trust Arising by operation of law to prevent unjust enrichment. See also **trustee**.

consumer goods Goods bought or used for personal, family, or household purposes.

consumer product Tangible personal property normally used for family, household, or personal purposes.

contingent remainder Remainder interest, conditional upon the happening of an event in addition to the termination of the preceding estate.

contract An agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

Destination contract Seller is required to tender delivery of the goods at a particular destination; seller bears the expense and risk of loss.

Executed contract Fully performed by all of the parties.

Executory contract Contract partially or entirely unperformed by one or more of the parties.

Express contract Agreement of parties that is expressed in words either in writing or orally.

Formal contract Agreement which is legally binding because of its particular form or mode of expression.

Implied-in-fact contract Contract where agreement of the parties is inferred from their conduct.

Informal contract All oral or written contracts other than formal contracts.

Installment contract Goods are delivered in separate lots.

Integrated contract Complete and total agreement.

Output contract A contract in which one party agrees to sell his entire output and the other agrees to buy it; it is not illusory, though it may be indefinite.

Quasi contract Obligation not based upon contract that is imposed to avoid injustice.

Requirements contract A contract in which one party agrees to purchase his total requirements from the other party; hence, such a contract is binding, not illusory.

Substituted contract An agreement between the parties to rescind their old contract and replace it with a new contract.

Unconscionable contract One which no sensible person not under duress, or in distress would make, and such as no honest and fair person would accept. A contract the terms of which are excessively unreasonable, overreaching, and one-sided.

Unenforceable contract Contract for the breach of which the law does not provide a remedy.

Unilateral and bilateral A unilateral contract is one in which one party makes an express engagement or undertakes a performance, without receiving in return any express engagement or promise of performance from the other. Bilateral (or reciprocal) contracts are those by which the parties expressly enter into mutual engagements.

contract clause Prohibition against the states' retroactively modifying public and private contracts.

contractual liability Obligation on a negotiable instrument, based upon signing the instrument.

contribution Payment from cosureties of their proportionate share.

contributory negligence An act or omission amounting to a want of ordinary care on the part of the complaining party, which, concurring with defendant's negligence, is proximate cause of injury.

The defense of contributory negligence is an absolute bar to any recovery in some states; because of this, it has been replaced by the doctrine of comparative negligence in many other states.

conversion Unauthorized and wrongful exercise of dominion and control over another's personal property, to exclusion of or inconsistent with rights of the owner.

convertible bond Bond that may be exchanged for other securities of the corporation.

copyright Exclusive right granted by federal government to authors of original works including literary, musical, dramatic, pictorial, graphic, sculptural, and film works.

corporation A legal entity ordinarily consisting of an association of numerous individuals. Such entity is regarded as having a personality and existence distinct from that of its several members and is vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years.

Closely held or close corporation Corporation that is owned by few shareholders and whose shares are not actively traded.

Corporation de facto One existing under color of law and in pursuance of an effort made in good faith to organize a corporation under the statute. Such a corporation is not subject to collateral attack.

Corporation de jure That which exists by reason of full compliance with requirements of an existing law permitting organization of such corporation.

Domestic corporation Corporation created under the laws of a given state.

Foreign corporation Corporation created under the laws of any other state, government, or country.

Publicly held corporation Corporation whose shares are owned by a large number of people and are widely traded.

Subchapter S corporation A small business corporation which, under certain conditions, may elect to have its undistributed taxable income taxed to its shareholders. I.R.C. §1371 et seq. Of major significance is the fact that Subchapter S status usually avoids the corporate income tax, and corporate losses can be claimed by the shareholders.

Subsidiary and parent Subsidiary corporation is one in which another corporation (called parent corporation) owns at least a majority of the shares and over which it thus has control.

corrective advertising Disclosure in an advertisement that previous ads were deceptive.

costs A pecuniary allowance, made to the successful party (and recoverable from the losing party), for his expenses in prosecuting or defending an action or a distinct proceeding within an action. Generally, "costs" do not include attorneys' fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.

cosureties Two or more sureties bound for the same debt of a principal debtor.

co-tenants Persons who hold title concurrently.

counterclaim A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff.

counteroffer A statement by the offeree which has the legal effect of rejecting the offer and of proposing a new offer to the offeror. However, the provisions of UCC §2-207(2) modify this principle by providing that the "additional terms are to be construed as proposals for addition to the contract."

course of dealing A sequence of previous acts and conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct. UCC §1-205(1).

course of performance Conduct between the parties concerning performance of the particular contract.

court above—court below In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari, while the "court below" is the one from which the case is being removed.

covenant Used primarily with respect to promises in conveyances or other instruments dealing with real estate.

Covenants against encumbrances A stipulation against all rights to or interests in the land which may subsist in third persons to the diminution of the value of the estate granted.

Covenant appurtenant A covenant which is connected with land of the grantor, not in gross. A covenant running with the land and binding heirs, executors, and assigns of the immediate parties.

Covenant for further assurance An undertaking, in the form of a covenant, on the part of the vendor of real estate to do such further acts for

the purpose of perfecting the purchaser's title as the latter may reasonably require.

Covenant for possession A covenant by which the grantee or lessee is granted possession.

Covenant for quiet enjoyment An assurance against the consequences of a defective title, and against any disturbances thereupon.

Covenants for title Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise covenants for seisin, for right to convey, against encumbrances, or quiet enjoyment, sometimes for further assurance, and almost always of warranty.

Covenant in gross Such as do not run with the land.

Covenant of right to convey An assurance by the covenantor that the grantor has sufficient capacity and title to convey the estate which he by his deed undertakes to convey.

Covenant of seisin An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey.

Covenant of warranty An assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title.

Covenant running with land A covenant which goes with the land, as being annexed to the estate, and which cannot be separated from the land or transferred without it. A covenant is said to run with the land when not only the original parties or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable (as the case may be) to its obligation. Such a covenant is said to be one which "touches and concerns" the land itself, so that its benefit or obligation passes with the ownership. Essentials are that the grantor and grantee must have intended that the covenant run with the land, the covenant must affect or concern the land with which it runs, and there must be privity of estate between the party claiming the benefit and the party who rests under the burden.

covenant not to compete Agreement to refrain from entering into a competing trade, profession, or business.

cover Buyer's purchase of goods in substitution for those not delivered by breaching seller.

credit beneficiary See **third-party beneficiary**.

creditor Any entity having a claim against the debtor.

crime An act or omission in violation of a public law and punishable by the government.

criminal duress Coercion by threat of serious bodily injury.

criminal intent Desired or virtually certain consequences of one's conduct.

criminal law The law that involves offenses against the entire community.

cure The right of a seller under the UCC to correct a nonconforming delivery of goods to buyer within the contract period. §2-508.

curtesy Husband's estate in the real property of his wife.

cy-pres As near (as possible). Rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be*, when it would be impossible or illegal to give it literal effect.

damage Loss, injury, or deterioration caused by the negligence, design, or accident of one person, with respect to another's person or property. The word is to be distinguished from its plural, "damages," which means a compensation in money for a loss or damage.

damages Money sought as a remedy for breach of contract or for tortious acts.

Actual damages Real, substantial, and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed, on the one hand, to "nominal" damages and, on the other, to "exemplary" or "punitive" damages. Synonymous with "compensatory damages" and "general damages."

Benefit-of-the-bargain damages Difference between the value received and the value of the fraudulent party's performance as represented.

Compensatory damages Compensatory damages are such as will compensate the injured party for the injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury.

Consequential damages Such damage, loss, or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act. Consequential damages resulting from a seller's breach of contract include any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise, and injury to person or property proximately resulting from any breach of warranty. UCC §2-715(2).

Exemplary or punitive damages Damages other than compensatory damages which may be awarded against a person to punish him for outrageous conduct.

Expectancy damages Calculable by subtracting the injured party's actual dollar position as a result of the breach from that party's projected dollar position had performance occurred.

Foreseeable damages Loss of which the party in breach had reason to know when the contract was made.

Incidental damages Under UCC §2-710, such damages include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care, and custody of goods after the buyer's breach, in connection with the return or resale of the goods, or otherwise resulting from the breach. Also, such damages, resulting from a seller's breach of contract, include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the delay or other breach. UCC §2-715(1).

Irreparable damages In the law pertaining to injunctions, damages for which no certain pecuniary standard exists for measurement.

Liquidated damages and penalties Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty. UCC §2-718(1).

Mitigation of damages A plaintiff may not recover damages for the effects of an injury which she reasonably could have avoided or substantially ameliorated. This limitation on recovery is generally denominated as "mitigation of damages" or "avoidance of consequences."

Nominal damages A small sum awarded where a contract has been breached but the loss is negligible or unproven.

Out-of-pocket damages Difference between the value received and the value given.

Reliance damages Contract damages placing the injured party in as good a position as he would have been in had the contract not been made.

Treble damages Three times actual loss.

de facto "In fact, in deed, actually." This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes but which is illegal or illegitimate. See also **corporation**, *corporation de facto*.

de jure Descriptive of a condition in which there has been total compliance with all requirements of law. In this sense it is the contrary of *de facto*. See also **corporation**, *corporation de jure*.

de novo Anew; afresh; a second time.

debenture Unsecured bond.

debt security Any form of corporate security reflected as debt on the books of the corporation in contrast to equity securities such as stock; *e.g.*, bonds, notes, and debentures are debt securities.

debtor Person who owes payment or performance of an obligation.

deceit A fraudulent and cheating misrepresentation, artifice, or device used to deceive and trick one who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. See also **fraud**; **misrepresentation**.

decree Decision of a court of equity.

deed A conveyance of realty; a writing, signed by a grantor, whereby title to realty is transferred from one party to another.

deed of trust Interest in real property which is conveyed to a third person as trustee for the creditor.

defamation Injury of a person's reputation by publication of false statements.

default judgment Judgment against a defendant who fails to respond to a complaint.

defendant The party against whom legal action is sought.

definite term Lease that automatically expires at end of the term.

delectus personae Partner's right to choose who may become a member of the partnership.

delegatee Third party to whom the delegator's duty is delegated.

delegation of duties Transferring to another all or part of one's duties arising under a contract.

delegator Party delegating his duty to a third party.

delivery The physical or constructive transfer of an instrument or of goods from one person to another. See also **constructive delivery**.

demand Request for payment made by the holder of the instrument.

demand paper Payable on request.

demurrer An allegation of a defendant that even if the facts as stated in the pleading to which objection is taken be true, their legal consequences are not such as to require the demurring party to answer them or to proceed further with the cause.

The Federal Rules of Civil Procedure do not provide for the use of a demurrer, but provide an equivalent to a general demurrer in the motion to dismiss for failure to state a claim on which relief may be granted. Fed.R. Civil P. 12(b).

deposition The testimony of a witness taken upon interrogatories, not in court, but intended to be used in court. See also **discovery**.

depository bank The first bank to which an item is transferred for collection even though it may also be the payor bank. UCC §4-105(a).

descent Succession to the ownership of an estate by inheritance or by any act of law, as distinguished from "purchase."

Descents are of two sorts, *lineal* and *collateral*. Lineal descent is descent in a direct or right line, as from father or grandfather to son or grandson. Collateral descent is descent in a collateral or oblique line, that is, up to the common ancestor and then down from him, as from brother to brother, or between cousins.

design defect Plans or specifications inadequate to ensure the product's safety.

devise A testamentary disposition of land or realty; a gift of real property by the last will and testament of the donor. When used as a noun, means a testamentary disposition of real or personal property; when used as a verb, means to dispose of real or personal property by will.

dictum Generally used as an abbreviated form of *obiter dictum*, "a remark by the way"; that is, an observation or remark made by a judge which does not embody the resolution or determination of the court and which is made without argument or full consideration of the point.

directed verdict In a case in which the party with the burden of proof has failed to present a prima facie case for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it because, as a matter of law, there can be only one such verdict. Fed.R. Civil P. 50(a).

disaffirmance Avoidance of a contract.

discharge Termination of certain allowed claims against a debtor.

disclaimer Negation of warranty.

discount A discount by a bank means a drawback or deduction made upon its advances or loans of money, upon negotiable paper or other evidences of debt payable at a future day, which are transferred to the bank.

discovery The pretrial devices that can be used by one party to obtain facts and information about the case from the other party in order to assist the party's preparation for trial. Under the Federal Rules of Civil Procedure, tools of discovery include depositions upon oral and written questions, written interrogatories, production of documents or things, permission to enter upon land or other property, physical and mental examinations, and requests for admission. Rules 26–37.

dishonor To refuse to accept or pay a draft or to pay a promissory note when duly presented. UCC §3-507(1); §4-210. See also **protest**.

disparagement Publication of false statements resulting in harm to another's monetary interests.

disputed debt Obligation whose existence or amount is contested.

dissenting shareholder One who opposes a fundamental change and has the right to receive the fair value of her shares.

dissolution The dissolution of a partnership is the change in the relation of the partners caused by any partner's ceasing to be associated with the carrying on, as distinguished from the winding up, of the business. See also **winding up**.

distribution Transfer of partnership property from the partnership to a partner; transfer of property from a corporation to any of its shareholders.

dividend The payment designated by the board of directors of a corporation to be distributed *pro rata* among a class or classes of the shares outstanding.

document Document of title.

document of title Instrument evidencing ownership of the document and the goods it covers.

domicile That place where a person has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.

dominant Land whose owner has rights in other land.

donee Recipient of a gift.

donee beneficiary See **third-party beneficiary**.

donor Maker of a gift.

dormant partner One who is both a silent and a secret partner.

dower A species of life-estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited.

Dower has been abolished in the majority of the states and materially altered in most of the others.

draft A written order by the first party, called the drawer, instructing a second party, called the drawee (such as a bank), to pay a third party, called the payee. An order to pay a sum certain in money, signed by a drawer, payable on demand or at a definite time, and to order or bearer. UCC §3-104.

drawee A person to whom a bill of exchange or draft is directed, and who is requested to pay the amount of money therein mentioned. The drawee of a check is the bank on which it is drawn.

When a drawee accepts, he engages that he will pay the instrument according to its tenor at the time of his engagement or as completed. UCC §3-413(1).

drawer The person who draws a bill or draft. The drawer of a check is the person who signs it.

The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest, he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse. UCC §3-413(2).

due negotiation Transfer of a negotiable document in the regular course of business to a holder, who takes in good faith, without notice of any defense or claim, and for value.

duress Unlawful constraint exercised upon a person, whereby he is forced to do some act against his will.

Physical duress Coercion involving physical force or the threat of physical force.

duty Legal obligation requiring a person to perform or refrain from performing an act.

earned surplus Undistributed net profits, income, gains, and losses.

earnest The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract.

easement A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property right in the owner. This right is distinguishable from a "license," which merely confers a personal privilege to do some act on the land.

Affirmative easement One where the servient estate must permit something to be done thereon, as to pass over it, or to discharge water on it.

Appurtenant easement An incorporeal right which is attached to a superior right and inheres in land to which it is attached and is in the nature of a covenant running with the land.

Easement by necessity Such arises by operation of law when land conveyed is completely shut off from access to any road by land retained by the grantor or by land of the grantor and that of a stranger.

Easement by prescription A mode of acquiring title to property by immemorial or long-continued enjoyment; refers to personal usage restricted to claimant and his ancestors or grantors.

Easement in gross An easement in gross is not appurtenant to any estate in land or does not belong to any person by virtue of ownership of an estate in other land but is a mere personal interest in or a right to use the land of another; it is purely personal and usually ends with death of grantee.

Easement of access Right of ingress and egress to and from the premises of a lot owner to a street appurtenant to the land of the lot owner.

ejectment An action to determine whether the title to certain land is in the plaintiff or is in the defendant.

electronic funds transfer A transaction with a financial institution by means of computer, telephone, or other electronic instrument.

emancipation The act by which an infant is liberated from the control of a parent or guardian and made his own master.

embezzlement The taking, in violation of a trust, of the property of one's employer.

emergency Sudden, unexpected event calling for immediate action.

eminent domain Right of the people or government to take private property for public use upon giving fair consideration.

employment discrimination Hiring, firing, compensating, promoting, or training of employees based on race, color, sex, religion, or national origin.

employment relationship One in which employer has right to control the physical conduct of employee.

endowment contract Agreement to pay insured a lump sum upon reaching a specified age or in event of death.

entirety Used to designate that which the law considers as a single whole incapable of being divided into parts.

entrapment Induced by a government official into committing a crime.

entrusting Transfer of possession of goods to a merchant who deals in goods of that kind and who may in turn transfer valid title to a buyer in the ordinary course of business.

equal pay Equivalent pay for the same work.

equal protection Requirement that similarly situated persons be treated similarly by government action.

equipment Goods used primarily in business.

equitable Just, fair, and right. Existing in equity; available or sustainable only in equity, or only upon the rules and principles of equity.

equity Justice administered according to fairness, as contrasted with the strictly formulated rules of common law. It is based on a system of rules and

principles which originated in England as an alternative to the harsh rules of common law and which were based on what was fair in a particular situation.

equity of redemption The right of the mortgagor of an estate to redeem the same after it has been forfeited, at law, by a breach of the condition of the mortgage, upon paying the amount of debt, interest, and costs.

equity securities Stock or similar security, in contrast to debt securities such as bonds, notes, and debentures.

error A mistake of law, or a false or irregular application of it, such as vitiated legal proceedings and warrants reversal of the judgment.

Harmless error In appellate practice, an error committed in the progress of the trial below which was not prejudicial to the rights of the party assigning it and for which, therefore, the appellate court will not reverse the judgment.

Reversible error In appellate practice, such an error as warrants the appellate court's reversal of the judgment before it.

escrow A system of document transfer in which a deed, bond, or funds is or are delivered to a third person to hold until all conditions in a contract are fulfilled; *e.g.*, delivery of deed to escrow agent under installment land sale contract until full payment for land is made.

estate The degree, quantity, nature, and extent of interest which a person has in real and personal property. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein.

Also, the total property of whatever kind that is owned by a decedent prior to the distribution of that property in accordance with the terms of a will or, when there is no will, by the laws of inheritance in the state of domicile of the decedent.

Future estate An estate limited to commence in possession at a future day, either without the intervention of a precedent estate or on the determination by lapse of time, or otherwise, of a precedent estate created at the same time. Examples include reversions and remainders.

estoppel A bar or impediment raised by the law which precludes a person from alleging or from denying a certain fact or state of facts, in consequence of his or her previous allegation, denial, conduct, or admission, or in consequence of a final adjudication of the matter in a court of law. See also **waiver**.

eviction Dispossession by process of law; the act of depriving a person of the possession of lands which he has held, pursuant to the judgment of a court.

evidence Any species of proof or probative matter legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to the parties' contention.

exception A formal objection to the action of the court, during the trial of a cause, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court but will seek to procure its reversal, and that he means to save the benefit of his request or objection in some future proceeding.

exclusionary rule Prohibition of illegally obtained evidence.

exclusive dealing Sole right to sell goods in a defined market.

exclusive jurisdiction Such jurisdiction that permits only one court (state or federal) to hear a case.

exculpatory clause Excusing oneself from fault or liability.

execution *Execution of contract* includes performance of all acts necessary to render it complete as an instrument; implies that nothing more need be done to make the contract complete and effective.

Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling property of the debtor.

executive order Legislation issued by the president or a governor.

executor A person appointed by a testator to carry out the directions and requests in his will and to dispose of the property according to his testamentary provisions after his decease. The female designation is executrix. A person appointed by the court in an intestacy situation is called the administrator(rix).

executory That which is yet to be executed or performed; that which remains to be carried into operation or effect; incomplete; depending upon a future performance or event. The opposite of executed.

executory contract See **contracts**.

executory promise Unperformed obligation.

exemplary damages See **damages**.

exoneration Relieved of liability.

express Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied."

express warranty Explicitly made contractual promise regarding property or contract rights transferred; in a sale of goods, an affirmation of fact or a promise about the goods or a description, including a sample, of goods which becomes part of the basis of the bargain.

expropriation Governmental taking of foreign-owned property for a public purpose and with payment.

ex-ship Risk of loss passes to buyer when the goods leaving the ship. See UCC §2-322. See also **F.A.S.**

extortion Making threats to obtain property.

fact An event that took place or a thing that exists.

false imprisonment Intentional interference with a person's freedom of movement by unlawful confinement.

false light Offensive publicity placing another in a false light.

false pretenses Intentional misrepresentation of fact in order to cheat another.

farm products Crops, livestock, or stock used or produced in farming.

F.A.S. Free alongside. Term used in sales price quotations indicating that the price includes all costs of transportation and delivery of the goods alongside the ship. See UCC §2-319(2).

federal preemption First right of the federal government to regulate matters within its powers to the possible exclusion of state regulation.

federal question Any case arising under the Constitution, statutes, or treaties of the United States.

fee simple

Absolute A fee simple absolute is an estate that is unlimited as to duration, disposition, and descendibility. It is the largest estate and most extensive interest that can be enjoyed in land.

Conditional Type of transfer in which grantor conveys fee simple on condition that something be done or not done.

Defeasible Type of fee grant which may be defeated on the happening of an event. An estate which may last forever, but which may end upon the happening of a specified event, is a "fee simple defeasible."

Determinable Created by conveyance which contains words effective to create a fee simple and, in addition, a provision for automatic expiration of the estate on occurrence of stated event.

fee tail An estate of inheritance, descending only to a certain class or classes of heirs; *e.g.*, an estate is conveyed or devised "to A. and the heirs of his body," or "to A. and the heirs male of his body," or "to A., and the heirs female of his body."

fellow servant rule Common law defense relieving employer from liability to an employee for injuries caused by negligence of fellow employee.

felony Serious crime.

fiduciary A person or institution who manages money or property for another and who must exercise in such management activity a standard of care imposed by law or contract; *e.g.*, executor of estate; receiver in bankruptcy; trustee.

fiduciary duty Duty of utmost loyalty and good faith, such as that owed by a fiduciary such as an agent to her principal.

field warehouse Secured party takes possession of the goods but the debtor has access to the goods.

final credit Payment of the instrument by the payor bank.

financing statement Under the Uniform Commercial Code, a financing statement is used under Article 9 to reflect a public record that there is a

security interest or claim to the goods in question to secure a debt. The financing statement is filed by the security holder with the secretary of state or with a similar public body; thus filed, it becomes public record. See also **secured transaction**.

fire (property) insurance Provides protection against loss due to fire or other related perils.

firm offer Irrevocable offer to sell or buy goods by a merchant in a signed writing which gives assurance that it will not be rescinded for up to three months.

fitness for a particular purpose Goods are fit for a stated purpose, provided that the seller selects the product knowing the buyer's intended use and that the buyer is relying on the seller's judgment.

fixture An article in the nature of personal property which has been so annexed to realty that it is regarded as a part of the land. Examples include a furnace affixed to a house or other building, counters permanently affixed to the floor of a store, and a sprinkler system installed in a building. UCC §9-313(1)(a).

Trade fixtures Such chattels as merchants usually possess and annex to the premises occupied by them to enable them to store, handle, and display their goods, which generally are removable without material injury to the premises.

F.O.B. Free on board at some location (for example, F.O.B. shipping point; F.O.B. destination); the invoice price includes delivery at seller's expense to that location. Title to goods usually passes from seller to buyer at the F.O.B. location. UCC §2-319(1).

foreclosure Procedure by which mortgaged property is sold on default of mortgagor in satisfaction of mortgage debt.

forgery Intentional falsification of a document with intent to defraud.

four unities Time, title, interest, and possession.

franchise A privilege granted or sold, such as to use a name or to sell products or services. The right given by a manufacturer or supplier to a retailer to use his products and name on terms and conditions mutually agreed upon.

fraud Elements include false representation; of a present or past fact; made by defendant; action in reliance thereon by plaintiff; and damage resulting to plaintiff from such misrepresentation.

fraud in the execution Misrepresentation that deceives the other party as to the nature of a document evidencing the contract.

fraud in the inducement Misrepresentation regarding the subject matter of a contract that induces the other party to enter into the contract.

fraudulent misrepresentation False statement made with knowledge of its falsity and intent to mislead.

freehold An estate for life or in fee. It must possess two qualities: (1) immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration.

friendly fire Fire contained where it is intended to be.

frustration of purpose doctrine Excuses a promisor in certain situations when the objectives of contract have been utterly defeated by circumstances arising after formation of the agreement, and performance is excused under this rule even though there is no impediment to actual performance.

full warranty One under which warrantor will repair the product and, if unsuccessful, will replace it or refund its cost.

fungibles With respect to goods or securities, those of which any unit is, by nature or usage of trade, the equivalent of any other like unit. UCC §1-201(17); *e.g.*, a bushel of wheat or other grain.

future estate See **estate**.

garnishment A statutory proceeding whereby a person's property, money, or credits in the possession or control of another are applied to payment of the former's debt to a third person.

general intangible Catchall category for collateral not otherwise covered.

general partner Member of either a general or limited partnership with unlimited liability for its debts, full management powers, and a right to share in the profits.

gift A voluntary transfer of property to another made gratuitously and without consideration. Essential requisites of “gift” are capacity of donor, intention of donor to make gift, completed delivery to or for donee, and acceptance of gift by donee.

gift causa mortis A gift in view of death is one which is made in contemplation, fear, or peril of death and with the intent that it shall take effect only in case of the death of the giver.

good faith Honesty in fact in conduct or in a transaction.

good faith purchaser Buyer who acts honestly, gives value, and takes the goods without notice or knowledge of any defect in the title of his transferor.

goods A term of variable content and meaning. It may include every species of personal property, or it may be given a very restricted meaning. Sometimes the meaning of “goods” is extended to include all tangible items, as in the phrase “goods and services.”

All things (including specially manufactured goods) which are movable at the time of identification to a contract for sale other than the money in which the price is to be paid, investment securities, and things in action. UCC §2-105(1).

grantee Transferee of property.

grantor A transferor of property. The creator of a trust is usually designated as the grantor of the trust.

gratuitous promise Promise made without consideration.

group insurance Covers a number of individuals.

guaranty A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person who, in the first instance, is liable for such payment or performance.

The terms *guaranty* and *suretyship* are sometimes used interchangeably; but they should not be confounded. The distinction between contract of suretyship and contract of guaranty is whether or not the undertaking is a joint undertaking with the principal or a separate and distinct contract; if it is the former, it is one of “suretyship,” and if the latter, it is one of “guaranty.” See also **surety**.

guardianship The relationship under which a person (the guardian) is appointed by a court to preserve and control the property of another (the ward).

heir A person who succeeds, by the rules of law, to an estate in lands, tenements, or hereditaments, upon the death of his ancestor, by descent and right of relationship.

holder Person who is in possession of a document of title or an instrument or an investment security drawn, issued, or indorsed to him or to his order, or to bearer, or in blank. UCC §1-201(20).

holder in due course A holder who takes an instrument for value, in good faith, and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

holograph A will or deed written entirely by the testator or grantor with his own hand and not witnessed (attested). State laws vary with respect to the validity of the holographic will.

homicide Unlawful taking of another’s life.

horizontal privity Who may bring a cause of action.

horizontal restraints Agreements among competitors.

hostile fire Any fire outside its intended or usual place.

identified goods Designated goods as a part of a particular contract.

illegal per se Conclusively presumed unreasonable and therefore illegal.

illusory promise Promise imposing no obligation on the promisor.

implied-in-fact condition Contingencies understood but not expressed by the parties.

implied-in-law condition Contingency that arises from operation of law.

implied warranty Obligation imposed by law upon the transferor of property or contract rights; implicit in the sale arising out of certain circumstances.

implied warranty of habitability Leased premises are fit for ordinary residential purposes.

impossibility Performance that cannot be done.

in personam “Against the person.” Action seeking judgment against a person involving his personal rights and based on jurisdiction of his person, as distinguished from a judgment against property (*i.e.*, in rem).

in personam jurisdiction Jurisdiction based on claims against a person, in contrast to jurisdiction over his property.

in re In the affair; in the matter of; concerning; regarding. This is the usual method of entitling a judicial proceeding in which there are no adversary parties, but merely some res concerning which judicial action is to be taken, such as a bankrupt’s estate, an estate in the probate court, a proposed public highway, etc.

in rem A technical term used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions, which are said to be *in personam*.

Quasi in rem A term applied to proceedings which are not strictly and purely *in rem*, but are brought against the defendant personally, though the real object is to deal with particular property or subject property to the discharge of claims asserted; for example, foreign attachment, or proceedings to foreclose a mortgage, remove a cloud from title, or effect a partition.

in rem jurisdiction Jurisdiction based on claims against property.

incidental beneficiary Third party whom the two parties to a contract have no intention of benefiting by their contract.

income bond Bond that conditions payment of interest on corporate earnings.

incontestability clause The prohibition of an insurer to avoid an insurance policy after a specified period of time.

indemnification Duty owed by principal to agent to pay agent for losses incurred while acting as directed by principal.

indemnify To reimburse one for a loss already incurred.

indenture A written agreement under which bonds and debentures are issued, setting forth maturity date, interest rate, and other terms.

independent contractor Person who contracts with another to do a particular job and who is not subject to the control of the other.

indicia Signs; indications. Circumstances which point to the existence of a given fact as probable, but not certain.

indictment Grand jury charge that the defendant should stand trial.

indispensable paper Chattel paper, instruments, and documents.

indorsee The person to whom a negotiable instrument, promissory note, bill of lading, etc., is assigned by indorsement.

indorsement The act of a payee, drawee, accommodation indorser, or holder of a bill, note, check, or other negotiable instrument, in writing his name upon the back of the same, with or without further or qualifying words, whereby the property in the same is assigned and transferred to another. UCC §3-202 *et seq.*

Blank indorsement No indorsee is specified.

Qualified indorsement Without recourse, limiting one’s liability on the instrument.

Restrictive indorsement Limits the rights of the indorser in some manner.

Special indorsement Designates an indorsee to be paid.

infliction of emotional distress Extreme and outrageous conduct intentionally or recklessly causing severe emotional distress.

information Formal accusation of a crime brought by a prosecutor.

infringement Unauthorized use.

injunction An equitable remedy forbidding the party defendant from doing some act which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law.

innkeeper Hotel or motel operator.

inquisitorial system System in which the judiciary initiates, conducts, and decides cases.

insider Relative or general partner of debtor, partnership in which debtor is a partner, or corporation in which debtor is an officer, director, or controlling person.

insiders Directors, officers, employees, and agents of the issuer as well as those the issuer has entrusted with information solely for corporate purposes.

insolvency Under the UCC, a person is insolvent who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they fall due or is insolvent within the meaning of the Federal Bankruptcy Law. UCC §1-201(23).

Insolvency (bankruptcy) Total liabilities exceed total value of assets.

Insolvency (equity) Inability to pay debts in ordinary course of business or as they become due.

inspection Examination of goods to determine whether they conform to a contract.

instrument Negotiable instruments, stocks, bonds, and other investment securities.

insurable interest Exists where insured derives pecuniary benefit or advantage by preservation and continued existence of property or would sustain pecuniary loss from its destruction.

insurance A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is usually called the “insurer” or “underwriter”; the other, the “insured” or “assured”; the written contract, a “policy”; the events insured against, “risks” or “perils”; and the subject, right, or interest to be protected, the “insurable interest.” Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

Co-insurance A form of insurance in which a person insures property for less than its full or stated value and agrees to share the risk of loss.

Life insurance Payment of a specific sum of money to a designated beneficiary upon the death of the insured.

Ordinary life Life insurance with a savings component that runs for the life of the insured.

Term life Life insurance issued for a limited number of years that does not have a savings component.

intangible property Protected interests that are not physical.

intangibles Accounts and general intangibles.

intent Desire to cause the consequences of an act or knowledge that the consequences are substantially certain to result from the act.

inter alia Among other things.

inter se or **inter sese** “Among or between themselves.” Used to distinguish rights or duties between two or more parties from their rights or duties to others.

interest in land Any right, privilege, power, or immunity in real property.

interest in partnership Partner’s share in the partnership’s profits and surplus.

interference with contractual relations Intentionally causing one of the parties to a contract not to perform the contract.

intermediary bank Any bank, except the depository or payor bank, to which an item is transferred in the course of collection. UCC §4-105(c).

intermediate test Requirement that legislation have a substantial relationship to an important governmental objective.

international law Deals with the conduct and relations of nation-states and international organizations.

interpretation Construction or meaning of a contract.

interpretative rules Statements issued by an administrative agency indicating its construction of its governing statute.

intestate A person is said to die intestate when he dies without making a will. The word is also often used to signify the person himself. *Compare* **testator**.

intrusion Unreasonable and highly offensive interference with the seclusion of another.

inventory Goods held for sale or lease or consumed in a business.

invitee A person is an “invitee” on land of another if (1) he enters by invitation, express or implied, (2) his entry is connected with the owner’s business or with an activity the owner conducts or permits to be conducted on his land, and (3) there is mutual benefit or a benefit to the owner.

joint liability Liability where creditor must sue all of the partners as a group.

joint and several liability Liability where creditor may sue partners jointly as a group or separately as individuals.

joint stock company A general partnership with some corporate attributes.

joint tenancy See **tenancy**.

joint venture An association of two or more persons to carry on a single business transaction for profit.

judgment The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination.

judgment in personam A judgment against a particular person, as distinguished from a judgment against a thing or a right or *status*.

judgment in rem An adjudication pronounced upon the status of some particular thing or subject matter, by a tribunal having competent authority.

judgment n.o.v. Judgment *non obstante veredicto* in its broadest sense is a judgment rendered in favor of one party notwithstanding the finding of a verdict in favor of the other party.

judgment notwithstanding the verdict A final binding determination on the merits made by the judge after and contrary to the jury’s verdict.

judgment on the pleadings Final binding determination on the merits made by the judge after the pleadings.

judicial lien Interest in property that is obtained by court action to secure payment of a debt.

judicial review Power of the courts to determine the constitutionality of legislative and executive acts.

jurisdiction The right and power of a court to adjudicate concerning the subject matter in a given case.

jurisdiction over the parties Power of a court to bind the parties to a suit.

jury A body of persons selected and summoned by law and sworn to try the facts of a case and to find according to the law and the evidence. In general, the province of the jury is to find the facts in a case, while the judge passes upon pure questions of law. As a matter of fact, however, the jury must often pass upon mixed questions of law and fact in determining the case, and in all such cases the instructions of the judge as to the law become very important.

justifiable reliance Reasonably influenced by a misrepresentation.

labor dispute Any controversy concerning terms or conditions of employment or union representation.

laches Based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with a lapse of time and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity.

landlord The owner of an estate in land, or a rental property, who has leased it to another person, called the “tenant.” Also called “lessor.”

larceny Trespassory taking and carrying away of the goods of another with the intent to permanently deprive.

last clear chance Final opportunity to avoid an injury.

lease Any agreement which gives rise to relationship of landlord and tenant (real property) or lessor and lessee (real or personal property).

The person who conveys is termed the “lessor,” and the person to whom conveyed, the “lessee”; and when the lessor conveys land or tenements to a lessee, he is said to lease, demise, or let them.

Sublease, or underlease One executed by the lessee of an estate to a third person, conveying the same estate for a shorter term than that for which the lessee holds it.

leasehold An estate in realty held under a lease. The four principal types of leasehold estates are the estate for years, periodic tenancy, tenancy at will, and tenancy at sufferance.

leasehold estate Right to possess real property.

legacy A legacy is a gift or bequest by will of personal property, whereas a devise is a testamentary disposition of real estate.

Demonstrative legacy A bequest of a certain sum of money, with a direction that it shall be paid out of a particular fund. It differs from a specific legacy in this respect: that, if the fund out of which it is payable fails for any cause, it is nevertheless entitled to come on the estate as a general legacy. And it differs from a general legacy in this: that it does not abate in that class, but in the class of specific legacies.

General legacy A pecuniary legacy, payable out of the general assets of a testator.

Residuary legacy A bequest of all the testator's personal estate not otherwise effectually disposed of by his will.

Specific legacy One which operates on property particularly designated. A legacy or gift by will of a particular specified thing, as of a horse, a piece of furniture, a term of years, and the like.

legal aggregate A group of individuals not having a legal existence separate from its members.

legal benefit Obtaining something to which one had no legal right.

legal detriment Doing an act one is not legally obligated to do or not doing an act one has a legal right to do.

legal entity An organization having a legal existence separate from that of its members.

legal sufficiency Benefit to promisor or detriment to promisee.

legislative rules Substantive rules issued by an administrative agency under the authority delegated to it by the legislature.

letter of credit An engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit.

letters of administration Formal document issued by probate court appointing one an administrator of an estate.

letters testamentary The formal instrument of authority and appointment given to an executor by the proper court, empowering him to enter upon the discharge of his office as executor. It corresponds to letters of administration granted to an administrator.

levy To assess; raise; execute; exact; tax; collect; gather; take up; seize. Thus, to levy (assess, exact, raise, or collect) a tax; to levy an execution, *i.e.*, to levy or collect a sum of money on an execution.

liability insurance Covers liability to others by reason of damage resulting from injuries to another's person or property.

liability without fault Crime to do a specific act or cause a certain result without regard to the care exercised.

libel Defamation communicated by writing, television, radio, or the like.

liberty Ability of individuals to engage in freedom of action and choice regarding their personal lives.

license License with respect to real property is a privilege to go on premises for a certain purpose, but does not operate to confer on or vest in the licensee any title, interest, or estate in such property.

licensee Person privileged to enter or remain on land by virtue of the consent of the lawful possessor.

lien A qualified right of property which a creditor has in or over specific property of his debtor, as security for the debt or charge or for performance of some act.

lien creditor A creditor who has acquired a lien on the property by attachment.

life estate An estate whose duration is limited to the life of the party holding it or of some other person. Upon the death of the life tenant, the property will go to the holder of the remainder interest or to the grantor by reversion.

limited liability Liability limited to amount invested in a business enterprise.

limited partner Member of a limited partnership with liability for its debts only to the extent of her capital contribution.

limited partnership See **partnership**.

limited partnership association A partnership which closely resembles a corporation.

liquidated Ascertained; determined; fixed; settled; made clear or manifest. Cleared away; paid; discharged.

liquidated damages See **damages**.

liquidated debt Obligation that is certain in amount.

liquidation The settling of financial affairs of a business or individual, usually by liquidating (turning to cash) all assets for distribution to creditors, heirs, etc. To be distinguished from dissolution.

loss of value Value of promised performance minus value of actual performance.

lost property Property with which the owner has involuntarily parted and which she does not know where to find or recover, not including property which she has intentionally concealed or deposited in a secret place for safekeeping. Distinguishable from mislaid property, which has been deliberately placed somewhere and forgotten.

main purpose rule Where object of promisor/surety is to provide an economic benefit for herself, the promise is considered outside of the statute of frauds.

maker One who makes or executes; as the maker of a promissory note. One who signs a check; in this context, synonymous with drawer. See **draft**.

mala in se Morally wrong.

mala prohibita Wrong by law.

mandamus "We command." A legal writ compelling the defendant to do an official duty.

manslaughter Unlawful taking of another's life without malice.

Involuntary manslaughter Taking the life of another by criminal negligence or during the course of a misdemeanor.

Voluntary manslaughter Intentional killing of another under extenuating circumstances.

manufacturing defect Not produced according to specifications.

mark Trade symbol.

market allocations Division of market by customers, geographic location, or products.

marketable title Free from any defects, encumbrances, or reasonable objections to one's ownership.

marshaling of assets Segregating the assets and liabilities of a partnership from the assets and liabilities of the individual partners.

master See **principal**.

material Matters to which a reasonable investor would attach importance in deciding whether to purchase a security.

material alteration Any change that changes the contract of any party to an instrument.

maturity The date at which an obligation, such as the principal of a bond or a note, becomes due.

maxim A general legal principle.

mechanic's lien A claim created by state statutes for the purpose of securing priority of payment of the price or value of work performed and materials furnished in erecting or repairing a building or other structure; as such, attaches to the land as well as buildings and improvements erected thereon.

mediation Nonbinding process in which a third party acts as an intermediary between the disputing parties and proposes solutions for them to consider.

mens rea Criminal intent.

mentally incompetent Unable to understand the nature and effect of one's acts.

mercantile law An expression substantially equivalent to commercial law. It designates the system of rules, customs, and usages generally recognized

and adopted by merchants and traders that, either in its simplicity or as modified by common law or statutes, constitutes the law for the regulation of their transactions and the solution of their controversies. The Uniform Commercial Code is the general body of law governing commercial or mercantile transactions.

merchant A person who deals in goods of the kind involved in a transaction or who otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. UCC §2-104(1).

merchantability Merchant seller guarantees that the goods are fit for their ordinary purpose.

merger The fusion or absorption of one thing or right into another. In corporate law, the absorption of one company by another, the latter retaining its own name and identity and acquiring the assets, liabilities, franchises, and powers of the former, which ceases to exist as separate business entity. It differs from a consolidation, wherein all the corporations terminate their separate existences and become parties to a new one.

Conglomerate merger An acquisition, which is not horizontal or vertical, by one company of another.

Horizontal merger Merger between business competitors, such as manufacturers of the same type of products or distributors selling competing products in the same market area.

Short-form merger Merger of a 90 percent subsidiary into its parent.

Vertical merger Union with corporate customer or supplier.

midnight deadline Midnight of the next banking day after receiving an item.

mining partnership A specific type of partnership for the purpose of extracting raw minerals.

minor Under the age of legal majority (usually eighteen).

mirror image rule An acceptance cannot deviate from the terms of the offer.

misdemeanor Less serious crime.

mislaid property Property which an owner has put deliberately in a certain place that she is unable to remember, as distinguished from lost property, which the owner has left unwittingly in a location she has forgotten. See also **lost property**.

misrepresentation Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. A “misrepresentation” that justifies the rescission of a contract is a false statement of a substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand. See also **deceit**; **fraud**.

Fraudulent misrepresentation False statement made with knowledge of its falsity and intent to mislead.

Innocent misrepresentation Misrepresentation made without knowledge of its falsity but with due care.

Negligent misrepresentation Misrepresentation made without due care in ascertaining its falsity.

M’Naughten Rule Right/wrong test for criminal insanity.

modify Change the lower court’s judgment.

money Medium of exchange issued by a government body.

monopoly Ability to control price or exclude others from the marketplace.

mortgage A mortgage is an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt.

mortgagor Debtor who uses real estate to secure an obligation.

multinational enterprise Business that engages in transactions involving the movement of goods, information, money, people, or services across national borders.

multiple product order Order requiring an advertiser to cease and desist from deceptive statements on all products it sells.

murder Unlawful and premeditated taking of another’s life.

mutual mistake Where the common but erroneous belief of both parties forms the basis of a contract.

necessaries Items needed to maintain a person’s station in life.

negligence The omission to do something which a reasonable person, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent person would not do.

Culpable negligence Greater than ordinary negligence but less than gross negligence.

negligence per se Conclusive on the issue of negligence (duty of care and breach).

negotiable Legally capable of being transferred by indorsement or delivery. Usually said of checks and notes and sometimes of stocks and bearer bonds.

negotiable instrument Signed document (such as a check or promissory note) containing an unconditional promise to pay a “sum certain” of money at a definite time to order or bearer.

negotiation Transferee becomes a holder.

net assets Total assets minus total debts.

no arrival, no sale A destination contract, but if goods do not arrive, seller is excused from liability unless such is due to the seller’s fault.

no-fault insurance Compensates victims of automobile accidents regardless of fault.

nonconforming use Preexisting use not in accordance with a zoning ordinance.

nonprofit corporation One whose profits must be used exclusively for the charitable, educational, or scientific purpose for which it was formed.

nonsuit Action in form of a judgment taken against a plaintiff who has failed to appear to prosecute his action or failed to prove his case.

note See **promissory note**.

novation A novation substitutes a new party and discharges one of the original parties to a contract by agreement of all three parties. A new contract is created with the same terms as the original one; only the parties have changed.

nuisance Nuisance is that activity which arises from the unreasonable, unwarranted, or unlawful use by a person of his own property, working obstruction or injury to the right of another or to the public, and producing such material annoyance, inconvenience, and discomfort that law will presume resulting damage.

obiter dictum See **dictum**.

objective fault Gross deviation from reasonable conduct.

objective manifestation What a reasonable person under the circumstances would believe.

objective satisfaction Approval based upon whether a reasonable person would be satisfied.

objective standard What a reasonable person under the circumstances would reasonably believe or do.

obligee Party to whom a duty of performance is owed (by delegator and delegatee).

obligor Party owing a duty (to the assignor).

offer A manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. Restatement, Second, Contracts, §24.

offeree Recipient of the offer.

offeror Person making the offer.

open-ended credit Credit arrangement under which debtor has rights to enter into a series of credit transactions.

opinion Belief in the existence of a fact or a judgment as to value.

option Contract providing that an offer will stay open for a specified period of time.

order A final disposition made by an agency.

order paper Payable to a named person or to anyone designated by that person.

order to pay Direction or command to pay.

original promise Promise to become primarily liable.

output contract See **contracts**.

palpable unilateral mistake Erroneous belief by one party that is recognized by the other.

parent corporation Corporation which controls another corporation.

parol evidence Literally oral evidence, but now includes prior to and contemporaneous, oral, and written evidence.

parol evidence rule Under this rule, when parties put their agreement in writing, all previous oral agreements merge in the writing and the contract as written cannot be modified or changed by parol evidence, in the absence of a plea of mistake or fraud in the preparation of the writing. But the rule does not forbid a resort to parol evidence not inconsistent with the matters stated in the writing. Also, as regards sales of goods, such written agreement may be explained or supplemented by course of dealing, usage of trade, or course of conduct, and by evidence of consistent additional terms, unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. UCC §2-202.

part performance In order to establish part performance taking an oral contract for the sale of realty out of the statute of frauds, the acts relied upon as part performance must be of such a character that they reasonably can be naturally accounted for in no other way than that they were performed in pursuance of the contract, and they must be in conformity with its provisions. See UCC §2-201(3).

partial assignment Transfer of a portion of contractual rights to one or more assignees.

partition The dividing of lands held by joint tenants, copartners, or tenants in common into distinct portions, so that the parties may hold those lands in severalty.

partnership An association of two or more persons to carry on, as co-owners, a business for profit.

Partnerships are treated as a conduit and are, therefore, not subject to taxation. The various items of partnership income (gains and losses, etc.) flow through to the individual partners and are reported on their personal income tax returns.

Limited partnership Type of partnership comprised of one or more general partners who manage business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in profits but who take no part in running business and incur no liability with respect to partnership obligations beyond contribution.

Partnership at will One with no definite term or specific undertaking.

partnership capital Total money and property contributed by partners for permanent use by the partnership.

partnership property Sum of all of the partnership's assets.

past consideration An act done before the contract is made.

patent Exclusive right to an invention.

payee The person in whose favor a bill of exchange, promissory note, or check is made or drawn.

payer or payor One who pays or who is to make a payment, particularly the person who is to make payment of a check, bill, or note. Correlative to "payee."

payor bank A bank by which an item is payable as drawn or accepted. UCC §4-105(b). Correlative to "Drawee bank."

per capita This term, derived from the civil law and much used in the law of descent and distribution, denotes that method of dividing an intestate estate by which an equal share is given to each of a number of persons, all of whom stand in equal degree to the decedent, without reference to their stocks or the right of representation. The opposite of *per stirpes*.

per stirpes This term, derived from the civil law and much used in the law of descent and distribution, denotes that method of dividing an intestate estate where a class or group of distributees takes the share to which its deceased would have been entitled, taking thus by its right of representing such ancestor and not as so many individuals. The opposite of *per capita*.

perfect tender rule Seller's tender of delivery must conform exactly to the contract.

perfection of security interest Acts required of a secured party in the way of giving at least constructive notice so as to make his security interest effective at least against lien creditors of the debtor. See UCC §§9-302 through 9-306. In most cases, the secured party may obtain perfection either by filing with the secretary of state or by taking possession of the collateral.

performance Fulfillment of one's contractual obligations. See also **part performance; specific performance**.

periodic tenancy Lease with a definite term that is to be continued.

personal defenses Contractual defenses which are good against holders but not holders in due course.

personal property Any property other than an interest in land.

petty crime Misdemeanor punishable by imprisonment of six months or less.

plaintiff The party who initiates a civil suit.

pleadings The formal allegations by the parties of their respective claims and defenses.

Rules or codes of civil procedure Unlike the rigid technical system of common law pleading, pleadings under federal and state rules or codes of civil procedure have a far more limited function, with determination and narrowing of facts and issues being left to discovery devices and pretrial conferences. In addition, the rules and codes permit liberal amendment and supplementation of pleadings. Under rules of civil procedure, the pleadings consist of a complaint, an answer, a reply to a counterclaim, an answer to a cross-claim, a third-party complaint, and a third-party answer.

pledge A bailment of goods to a creditor as security for some debt or engagement.

Much of the law of pledges has been replaced by the provisions for secured transactions in Article 9 of the UCC.

possibility of reverter The interest which remains in a grantor or testator after the conveyance or devise of a fee simple determinable and which permits the grantor to be revested automatically of his estate on breach of the condition.

possibility test Under the statute of frauds, asks whether performance could possibly be completed within one year.

power of appointment A power of authority conferred by one person by deed or will upon another (called the "donee") to appoint, that is, to select and nominate, the person or persons who is or are to receive and enjoy an estate or an income therefrom or from a fund, after the testator's death, or the donee's death, or after the termination of an existing right or interest.

power of attorney An instrument authorizing a person to act as the agent or attorney of the person granting it.

power of termination The interest left in the grantor or testator after the conveyance or devise of a fee simple on condition subsequent or conditional fee.

precatory Expressing a wish.

precedent An adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. See also **stare decisis**.

preemptive right The privilege of a stockholder to maintain a proportionate share of ownership by purchasing a proportionate share of any new stock issues.

preference The act of an insolvent debtor who, in distributing his property or in assigning it for the benefit of his creditors, pays or secures to one or more creditors the full amount of their claims or a larger amount than they would be entitled to receive on a *pro rata* distribution. The treatment

of such preferential payments in bankruptcy is governed by the Bankruptcy Act, §547.

preliminary hearing Determines whether there is probable cause.

premium The price for insurance protection for a specified period of exposure.

preponderance of the evidence Greater weight of the evidence; standard used in civil cases.

prescription Acquisition of a personal right to use a way, water, light, and air by reason of continuous usage. See also **easement**.

presenter's warranty Warranty given to any payor or acceptor of an instrument.

presentment The production of a negotiable instrument to the drawee for his acceptance, or to the drawer or acceptor for payment; or of a promissory note to the party liable, for payment of the same. UCC §3-504(1).

presumption A presumption is a rule of law, statutory or judicial, by which a finding of a basic fact gives rise to the existence of presumed fact, until presumption is rebutted. A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

price discrimination Price differential.

price fixing Any agreement for the purpose and effect of raising, depressing, fixing, pegging, or stabilizing prices.

prima facie (Latin) At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary.

primary liability Absolute obligation to pay a negotiable instrument.

principal

Law of agency The term "principal" describes one who has permitted or directed another (*i.e.*, an agent or a servant) to act for his benefit and subject to his direction and control. Principal includes in its meaning the term "master" or employer, a species of principal who, in addition to other control, has a right to control the physical conduct of the species of agents known as servants or employees, as to whom special rules are applicable with reference to harm caused by their physical acts.

Disclosed principal One whose existence and identity are known.

Partially disclosed principal One whose existence is known but whose identity is not known.

Undisclosed principal One whose existence and identity are not known.

principal debtor Person whose debt is being supported by a surety.

priority Precedence in order of right.

private carrier Carrier which limits its service and is not open to the general public.

private corporation One organized to conduct either a privately owned business enterprise for profit or a nonprofit corporation.

private law The law involving relationships among individuals and legal entities.

privilege Immunity from tort liability.

privity Contractual relationship.

privity of contract That connection or relationship which exists between two or more contracting parties. The absence of privity as a defense in actions for damages in contract and tort actions is generally no longer viable with the enactment of warranty statutes (*e.g.*, UCC §2-318), acceptance by states of the doctrine of strict liability, and court decisions which have extended the right to sue to third-party beneficiaries and even innocent bystanders.

probable cause Reasonable belief of the offense charged.

probate Court procedure by which a will is proved to be valid or invalid, though in current usage this term has been expanded to include generally all matters and proceedings pertaining to administration of estates, guardianships, etc.

procedural due process Requirement that governmental action depriving a person of life, liberty, or property be done through a fair procedure.

procedural law Rules for enforcing substantive law.

procedural rules Rules issued by an administrative agency establishing its organization, method of operation, and rules of conduct for practice before it.

procedural unconscionability Unfair or irregular bargaining.

proceeds Consideration for the sale, exchange, or other disposition of collateral.

process

Judicial process In a wide sense, this term may include all the acts of a court from the beginning to the end of its proceedings in a given cause; more specifically, it means the writ, summons, mandate, or other process which is used to inform the defendant of the institution of proceedings against him and to compel his appearance, in either civil or criminal cases.

Legal process This term is sometimes used as equivalent to "lawful process." Thus, it is said that legal process means process not merely fair on its face but valid in fact. But properly it means a summons, writ, warrant, mandate, or other process issuing from a court.

profit corporation One founded for the purpose of operating a business for profit.

profit à prendre Right to make some use of the soil of another, such as a right to mine metals; carries with it the right of entry and the right to remove.

promise to pay Undertaking to pay an existing obligation.

promisee Person to whom a promise is made.

promisor Person making a promise.

promissory estoppel Arises where there is a promise which promisor should reasonably expect to induce action or forbearance on part of promisee and which does induce such action or forbearance, and where injustice can be avoided only by enforcement of the promise.

promissory note An unconditional written promise to pay a specified sum of money on demand or at a specified date. Such a note is negotiable if signed by the maker and containing an unconditional promise to pay a sum certain in money either on demand or at a definite time and payable to order or bearer. UCC §3-104.

promoters In the law relating to corporations, those persons who first associate themselves for the purpose of organizing a company, issuing its prospectus, procuring subscriptions to the stock, securing a charter, etc.

property Interest that is legally protected.

Abandoned property Intentionally disposed of by the owner.

Lost property Unintentionally left by the owner.

Mislaid property Intentionally placed by the owner but unintentionally left.

prosecute To bring a criminal proceeding.

protest A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses his dissent or disapproval or affirms the act against his will. The object of such a declaration usually is to preserve some right which would be lost to the protester if his assent could be implied, or to exonerate him from some responsibility which would attach to him unless he expressly negated his assent.

Notice of protest A notice given by the holder of a bill or note to the drawer or indorser that the bill has been protested for refusal of payment or acceptance. UCC §3-509.

provisional credit Tentative credit for the deposit of an instrument until final credit is given.

proximate cause Where the act or omission played a substantial part in bringing about or actually causing the injury or damage and where the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

proxy (Contracted from "procuracy.") Written authorization given by one person to another so that the second person can act for the first, such as that given by a shareholder to someone else to represent him and vote his shares at a shareholders' meeting.

public corporation One created to administer a unit of local civil government or one created by the United States to conduct public business.

public disclosure of private facts Offensive publicity given to private information about another person.

public law The law dealing with the relationship between government and individuals.

puffery Sales talk that is considered general bragging or overstatement.

punitive damages Damages awarded in excess of normal compensation to punish a defendant for a serious civil wrong.

purchase money security interest Security interest retained by a seller of goods in goods purchased with the loaned money.

qualified fee Ownership subject to its being taken away upon the happening of an event.

quantum meruit "As much as he deserves." Describes the extent of liability on a contract implied by law. Elements essential to recovery under quantum meruit are (1) valuable services rendered or materials furnished (2) for the person sought to be charged, (3) which services and materials such person accepted, used, and enjoyed, (4) under such circumstances as reasonably notified her that plaintiff, in performing such services, was expected to be paid by the person sought to be charged.

quasi As if; almost as it were; analogous to. Negatives the idea of identity but points out that the conceptions are sufficiently similar to be classed as equals of one another.

quasi contract Legal fiction invented by common law courts to permit recovery by contractual remedy in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though a promise had been made.

quasi in rem See **in rem**.

quasi in rem jurisdiction Jurisdiction over property not based on claims against it.

quiet enjoyment Right of a tenant not to have his physical possession of premises interfered with by the landlord.

quitclaim deed A deed of conveyance operating by way of release; that is, intended to pass any title, interest, or claim which the grantor may have in the premises but neither professing that such title is valid nor containing any warranty or covenants for title.

quorum When a committee, board of directors, meeting of shareholders, legislature, or other body of persons cannot act unless at least a certain number of them are present.

rape Unlawful, nonconsensual sexual intercourse.

ratification In a broad sense, the confirmation of a previous act done either by the party himself or by another; as, for example, confirmation of a voidable act.

In the law of principal and agent, the adoption and confirmation by one person, with knowledge of all material facts, of an act or contract performed or entered into in his behalf by another who at the time assumed without authority to act as his agent.

rational relationship test Requirement that legislation bear a rational relationship to a legitimate governmental interest.

real defenses Defenses that are valid against all holders, including holders in due course.

real property Land, and generally whatever is erected or growing upon or affixed to land. Also, rights issuing out of, annexed to, and exercisable within or about land. See also **fixture**.

reasonable man standard Duty of care required to avoid being negligent; one who is careful, diligent, and prudent.

receiver A fiduciary of the court, whose appointment is incident to other proceedings wherein certain ultimate relief is prayed. He is a trustee or ministerial officer representing the court, all parties in interest in the litigation, and the property or funds entrusted to him.

recognizance Formal acknowledgment of indebtedness made in court.

redemption The realization of a right to have the title of property restored free and clear of a mortgage, performance of the mortgage obligation being

essential for such purpose. (b) Repurchase by corporation of its own shares.

reformation Equitable remedy used to reframe written contracts to reflect accurately real agreement between contracting parties when, either through mutual mistake or unilateral mistake coupled with actual or equitable fraud by the other party, the writing does not embody the contract as actually made.

regulatory license Requirement to protect the public interest.

reimbursement Duty owed by principal to pay back authorized payments agent has made on principal's behalf. Duty owed by a principal debtor to repay surety who pays principal debtor's obligation.

rejection The refusal to accept an offer; manifestation of an unwillingness to accept the goods (sales).

release The relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced.

remainder An estate limited to take effect and be enjoyed after another estate is determined.

remand To send back. The sending by the appellate court of a cause back to the same court out of which it came, for the purpose of having some further action taken on it there.

remedy The means by which the violation of a right is prevented, redressed, or compensated. Though a remedy may be by the act of the party injured, by operation of law, or by agreement between the injurer and the injured, we are chiefly concerned with one kind of remedy, the judicial remedy, which is by action or suit.

rent Consideration paid for use or occupation of property. In a broader sense, it is the compensation or fee paid, usually periodically, for the use of any property, land, buildings, equipment, etc.

replevin An action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken such goods or chattels or who wrongfully detains them.

reply Plaintiff's pleading in response to the defendant's answer.

repudiation Repudiation of a contract means refusal to perform duty or obligation owed to other party.

requirements contract See **contracts**.

res ipsa loquitur "The thing speaks for itself." Permits the jury to infer both negligent conduct and causation.

rescission An equitable action in which a party seeks to be relieved of his obligations under a contract on the grounds of mutual mistake, fraud, impossibility, etc.

residuary Pertaining to the residue; constituting the residue; giving or bequeathing the residue; receiving or entitled to the residue. See also **legacy**, **residuary legacy**.

respondent superior "Let the master answer." This maxim means that a master or employer is liable in certain cases for the wrongful acts of his servant or employee, and a principal for those of his agent.

respondent In equity practice, the party who makes an answer to a bill or other proceeding. In appellate practice, the party who contends against an appeal; *i.e.*, the appellee. The party who appeals is called the "appellant."

restitution An equitable remedy under which a person who has rendered services to another seeks to be reimbursed for the costs of his acts (but not his profits) even though there was never a contract between the parties.

restraint on alienation A provision in an instrument of conveyance which prohibits the grantee from selling or transferring the property which is the subject of the conveyance. Many such restraints are unenforceable as against public policy and the law's policy of free alienability of land.

restraint of trade Agreement that eliminates or tends to eliminate competition.

restrictive covenant Private restriction on property contained in a conveyance.

revenue license Measure to raise money.

reverse An appellate court uses the term “reversed” to indicate that it annuls or avoids the judgment, or vacates the decree, of the trial court.

reverse discrimination Employment decisions taking into account race or gender in order to remedy past discrimination.

reversion The term reversion has two meanings. First, it designates the estate left in the grantor during the continuance of a particular estate; second, it denotes the residue left in grantor or his heirs after termination of a particular estate. It differs from a remainder in that it arises by an act of law, whereas a remainder arises by an act of the parties. A reversion, moreover, is the remnant left in the grantor, while a remainder is the remnant of the whole estate disposed of after a preceding part of the same has been given away.

revocation The recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void.

revocation of acceptance Rescission of one’s acceptance of goods based upon a nonconformity of the goods which substantially impairs their value.

right Legal capacity to require another person to perform or refrain from performing an act.

right of entry The right to take or resume possession of land by entering on it in a peaceable manner.

right of redemption The right (granted by statute only) to free property from the encumbrance of a foreclosure or other judicial sale, or to recover the title passing thereby, by paying what is due, with interest, costs, etc. Not to be confounded with the “equity of redemption,” which exists independently of statute but must be exercised before sale. See also **equity of redemption**.

right to work law State statute that prohibits union shop contracts.

rights in collateral Personal property the debtor owns, possesses, or is in the process of acquiring.

risk of loss Allocation of loss between seller and buyer where the goods have been damaged, destroyed, or lost.

robbery Larceny from a person by force or threat of force.

rule Agency statement of general or particular applicability designed to implement, interpret, or process law or policy.

rule against perpetuities Principle that no interest in property is good unless it must vest, if at all, not later than twenty-one years, plus period of gestation, after some life or lives in being at time of creation of interest.

rule of reason Balancing the anticompetitive effects of a restraint against its procompetitive effects.

sale Transfer of title to goods from seller to buyer for a price.

sale on approval Transfer of possession without title to buyer for trial period.

sale or return Sale where buyer has option to return goods to seller.

sanction Means of enforcing legal judgments.

satisfaction The discharge of an obligation by paying a party what is due to him (as on a mortgage, lien, or contract) or what has been awarded to him by the judgment of a court or otherwise. Thus, a judgment is satisfied by the payment of the amount due to the party who has recovered such judgment, or by his levying the amount. See also **accord and satisfaction**.

scienter Knowingly.

seal Symbol that authenticates a document.

secondary liability Obligation to pay is subject to the conditions of presentment, dishonor, notice of dishonor, and sometimes protest.

secret partner Partner whose membership in the partnership is not disclosed.

Section 402A Strict liability in tort.

secured bond A bond having a lien on specific property.

secured claim Claim with a lien on property of the debtor.

secured party Creditor who possesses a security interest in collateral.

secured transaction A transaction founded on a security agreement. Such agreement creates or provides for a security interest. UCC §9-105(h).

securities Stocks, bonds, notes, convertible debentures, warrants, or other documents that represent a share in a company or a debt owed by a company.

Certificated security Security represented by a certificate.

Exempt security Security not subject to registration requirements of 1933 Act.

Exempt transaction Issuance of securities not subject to the registration requirements of 1933 Act.

Restricted securities Securities issued under an exempt transaction.

Uncertificated security Security not represented by a certificate.

security agreement Agreement that grants a security interest.

security interest Right in personal property securing payment or performance of an obligation.

seisin Possession with an intent on the part of him who holds it to claim a freehold interest.

self-defense Force to protect oneself against attack.

separation of powers Allocation of powers among the legislative, executive, and judicial branches of government.

service mark Distinctive symbol, word, or design that is used to identify the services of a provider.

servient Land subject to an easement.

setoff A counterclaim demand which defendant holds against plaintiff, arising out of a transaction extrinsic to plaintiff’s cause of action.

settlor Creator of a trust.

severance The destruction of any one of the unities of a joint tenancy. It is so called because the estate is no longer a joint tenancy, but is severed.

Term may also refer to the cutting of crops, such as corn, wheat, etc., or to the separation of anything from realty.

share A proportionate ownership interest in a corporation.

Shelley’s case, rule in Where a person takes an estate of freehold, legally or equitably, under a deed, will, or other writing, and in the same instrument there is a limitation by way of remainder of any interest of the same legal or equitable quality to his heirs, or heirs of his body, as a class of persons to take in succession from generation to generation, the limitation to the heirs entitles the ancestor to the whole estate.

The rule was adopted as a part of the common law of this country, though it has long since been abolished by most states.

shelter rule Transferee gets rights of transferor.

shipment contract Seller is authorized or required only to bear the expense of placing goods with the common carrier and bears the risk of loss only up to such point.

short-swing profits Profits made by insider through sale or other disposition of corporate stock within six months after purchase.

sight draft An instrument payable on presentment.

signature Any symbol executed with intent to validate a writing.

silent partner Partner who takes no part in the partnership business.

slander Oral defamation.

small claims courts Inferior civil courts with jurisdiction limited by dollar amount.

social security Measures by which the government provides economic assistance to disabled or retired employees and their dependents.

sole proprietorship A form of business in which one person owns all the assets of the business, in contrast to a partnership or a corporation.

sovereign immunity Foreign country’s freedom from a host country’s laws.

special warranty deed Seller promises that he has not impaired title.

specific performance The doctrine of specific performance is that where damages would compensate inadequately for the breach of an agreement, the contractor or vendor will be compelled to perform specifically what he has agreed to do; *e.g.*, ordered to execute a specific conveyance of land.

With respect to the sale of goods, specific performance may be decreed where the goods are unique or in other proper circumstances. The decree for specific performance may include such terms and conditions as to

payment of the price, damages, or other relief as the court may deem just. UCC §§2-711(2)(b), 2-716.

standardized business form A preprinted contract.

stare decisis Doctrine that once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases having substantially the same facts, regardless of whether the parties and property are the same or not.

state action Actions by governments, as opposed to actions taken by private individuals.

state-of-the-art Made in accordance with the level of technology at the time the product is made.

stated capital Consideration, other than that allocated to capital surplus, received for issued stock.

statute of frauds A celebrated English statute, passed in 1677, which has been adopted, in a more or less modified form, in nearly all of the United States. Its chief characteristic is the provision that no action shall be brought on certain contracts unless there be a note or memorandum thereof in writing, signed by the party to be charged or by his authorized agent.

statute of limitation A statute prescribing limitations to the right of action on certain described causes of action; that is, declaring that no suit shall be maintained on such causes of action unless brought within a specified period after the right accrued.

statutory lien Interest in property, arising solely by statute, to secure payment of a debt.

stock "Stock" is distinguished from "bonds" and, ordinarily, from "debentures" in that it gives a right of ownership in part of the assets of a corporation and a right to interest in any surplus after the payment of debt. "Stock" in a corporation is an equity, representing an ownership interest. It is to be distinguished from obligations such as notes or bonds, which are not equities and represent no ownership interest.

Capital stock See **capital**.

Common stock Securities which represent an ownership interest in a corporation. If the company has also issued preferred stock, both common and preferred have ownership rights. Claims of both common and preferred stockholders are junior to claims of bondholders or other creditors of the company. Common stockholders assume the greater risk, but generally exercise the greater control and may gain the greater reward in the form of dividends and capital appreciation.

Convertible stock Stock which may be changed or converted into common stock.

Cumulative preferred Stock having a provision that if one or more dividends are omitted, the omitted dividends must be paid before dividends may be paid on the company's common stock.

Preferred stock is a separate portion or class of the stock of a corporation that is accorded, by the charter or by-laws, a preference or priority in respect to dividends, over the remainder of the stock of the corporation, which in that case is called *common stock*.

Stock warrant A certificate entitling the owner to buy a specified amount of stock at a specified time(s) for a specified price. Differs from a stock option only in that options are granted to employees and warrants are sold to the public.

Treasury stock Shares reacquired by a corporation.

stock option Contractual right to purchase stock from a corporation.

stop payment Order for a drawee not to pay an instrument.

strict liability A concept applied by the courts in product liability cases in which a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety. This concept applies to all members involved in the manufacture and sale of any facet of the product.

strict scrutiny test Requirement that legislation be necessary to promote a compelling governmental interest.

subagent Person appointed by agent to perform agent's duties.

subject matter jurisdiction Authority of a court to decide a particular kind of case.

subject to the mortgage Purchaser is not personally obligated to pay the debt, but the property remains subject to the mortgage.

subjective fault Desired or virtually certain consequences of one's conduct.

subjective satisfaction Approval based upon a party's honestly held opinion.

sublease Transfer of less than all of a tenant's interest in a leasehold.

subpoena A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter. A subpoena duces tecum requires production of books, papers, and other things.

subrogation The substitution of one thing for another, or of one person into the place of another with respect to rights, claims, or securities.

Subrogation denotes the putting of a third person who has paid a debt in the place of the creditor to whom he has paid it, so that he may exercise against the debtor all the rights which the creditor, if unpaid, might have exercised.

subscribe Literally, to write underneath, as one's name. To sign at the end of a document. Also, to agree in writing to furnish money or its equivalent, or to agree to purchase some initial stock in a corporation.

subscriber Person who agrees to purchase initial stock in a corporation.

subsidiary corporation Corporation controlled by another corporation.

substantial performance Equitable doctrine protects against forfeiture for technical inadvertence, trivial variations, or omissions in performance.

substantive due process Requirement that governmental action be compatible with individual liberties.

substantive law The basic law of rights and duties (contract law, criminal law, tort law, law of wills, etc.), as opposed to procedural law (law of pleading, law of evidence, law of jurisdiction, etc.).

substantive unconscionability Oppressive or grossly unfair contractual terms.

sue To begin a lawsuit in a court.

suit A generic term of comprehensive signification that applies to any proceeding in a court of justice in which the plaintiff pursues, in such court, the remedy which the law affords him for the redress of an injury or the recovery of a right.

Derivative suit Suit brought by a shareholder on behalf of a corporation to enforce a right belonging to the corporation.

Direct suit Suit brought by a shareholder against a corporation based upon his ownership of shares.

summary judgment Rule of Civil Procedure 56 permits any party to a civil action to move for a summary judgment on a claim, counterclaim, or cross-claim when he believes that there is no genuine issue of material fact and that he is entitled to prevail as a matter of law.

summons Writ or process directed to the sheriff or other proper officer, requiring him to notify the person named that an action has been commenced against him in the court from which the process has issued and that he is required to appear, on a day named, and answer the complaint in such action.

superseding cause Intervening event that occurs after the defendant's negligent conduct and relieves him of liability.

supreme law A law that takes precedence over all conflicting laws.

surety One who undertakes to pay money or to do any other act in event that his principal debtor fails therein.

suretyship A guarantee of debts of another.

surplus Excess of net assets over stated capital.

tangible property Physical objects.

tariff Duty or tax imposed on goods moving into or out of a country.

tenancy Possession or occupancy of land or premises under lease.

Joint tenancy Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time,

and held by one and the same undivided possession. The primary incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivors, and at length to the last survivor.

Tenancy at sufferance Only naked possession which continues after tenant's right of possession has terminated.

Tenancy at will Possession of premises by permission of owner or landlord, but without a fixed term.

Tenancy by the entirety A tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, the other takes the whole to the exclusion of the deceased's heirs. It is essentially a "joint tenancy," modified by the common law theory that husband and wife are one person.

Tenancy for a period A tenancy for years or for some fixed period.

Tenancy in common A form of ownership whereby each tenant (*i.e.*, owner) holds an undivided interest in property. Unlike the interest of a joint tenant or a tenant by the entirety, the interest of a tenant in common does not terminate upon his or her prior death (*i.e.*, there is no right of survivorship).

tenancy in partnership Type of joint ownership that determines partners' rights in specific partnership property.

tenant Possessor of a leasehold interest.

tender An offer of money; the act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition.

Also, there may be a tender of performance of a duty other than the payment of money.

tender of delivery Seller makes available to buyer goods conforming to the contract and so notifies the buyer.

tender offer General invitation to all shareholders to purchase their shares at a specified price.

testament Will.

testator One who makes or has made a testament or will; one who dies leaving a will.

third-party beneficiary One for whose benefit a promise is made in a contract but who is not a party to the contract.

Creditor beneficiary Where performance of a promise in a contract will benefit a person other than the promisee, that person is a creditor beneficiary if no purpose to make a gift appears from the terms of the promise, in view of the accompanying circumstances, and performance of the promise will satisfy an actual, supposed, or asserted duty of the promisee to the beneficiary.

Donee beneficiary The person who takes the benefit of the contract even though there is no privity between him and the contracting parties. A third-party beneficiary who is not a creditor beneficiary. See also **beneficiary**.

time paper Payable at definite time.

time-price doctrine Permits sellers to have different prices for cash sales and credit sales.

title The means whereby the owner of lands or of personalty has the just possession of his property.

title insurance Provides protection against defect in title to real property.

tort A private or civil wrong or injury, other than breach of contract, for which a court will provide a remedy in the form of an action for damages.

Three elements of every tort action are the existence of a legal duty from defendant to plaintiff, breach of that duty, and damage as proximate result.

tortfeasor One who commits a tort.

trade acceptance A draft drawn by a seller which is presented for signature (acceptance) to the buyer at the time goods are purchased and which then becomes the equivalent of a note receivable of the seller and the note payable of the buyer.

trade name Name used in trade or business to identify a particular busi-

trade secrets Private business information.

trademark Distinctive insignia, word, or design of a good that is used to identify the manufacturer.

transferor's warranty Warranty given by any person who transfers an instrument and receives consideration.

treaty An agreement between or among independent nations.

treble damages Three times actual loss.

trespass At common law, trespass was a form of action brought to recover damages for any injury to one's person or property or relationship with another.

Trespass to chattels or personal property An unlawful and serious interference with the possessory rights of another to personal property.

Trespass to land At common law, every unauthorized and direct breach of the boundaries of another's land was an actionable trespass. The present prevailing position of the courts finds liability for trespass only in the case of intentional intrusion, or negligence, or some "abnormally dangerous activity" on the part of the defendant. *Compare* **nuisance**.

trespasser Person who enters or remains on the land of another without permission or privilege to do so.

trust Any arrangement whereby property is transferred with the intention that it be administered by a trustee for another's benefit.

A trust, as the term is used in the Restatement, when not qualified by the word "charitable," "resulting," or "constructive," is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises through a manifestation of an intention to create such benefit. Restatement, Second, Trusts §2.

Charitable trust To benefit humankind.

Constructive trust Wherever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust* and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment.

Inter vivos trust Established during the settlor's lifetime.

Resulting trust One that arises by implication of law, where the legal estate in property is disposed of, conveyed, or transferred, but the intent appears or is inferred from the terms of the disposition, or from the accompanying facts and circumstances, that the beneficial interest is not to go or be enjoyed with the legal title.

Spendthrift trust Removal of the trust estate from the beneficiary's control.

Testamentary trust Established by a will.

Totten trust A tentative trust which is a joint bank account opened by the settlor.

Voting trust A trust which holds the voting rights to stock in a corporation. It is a useful device when a majority of the shareholders in a corporation cannot agree on corporate policy.

trustee In a strict sense, a "trustee" is one who holds the legal title to property for the benefit of another, while, in a broad sense, the term is sometimes applied to anyone standing in a fiduciary or confidential relation to another, such as agent, attorney, bailee, etc.

trustee in bankruptcy Representative of the estate in bankruptcy who is responsible for collecting, liquidating, and distributing the debtor's assets.

tying arrangement Conditioning a sale of a desired product (tying product) on the buyer's purchasing a second product (tied product).

ultra vires Acts beyond the scope of the powers of a corporation, as defined by its charter or by the laws of its state of incorporation. By the doctrine of *ultra vires*, a contract made by a corporation beyond the scope of its corporate powers is unlawful.

unconscionable Unfair or unduly harsh.

unconscionable contract See **contracts**.

underwriter Any person, banker, or syndicate that guarantees to furnish a

return for an issue of bonds or stock. In insurance, the one assuming a risk in return for the payment of a premium.

undisputed debt Obligation whose existence and amount are not contested.

undue influence Term refers to conduct by which a person, through his power over the mind of a testator, makes the latter's desires conform to his own, thereby overmastering the volition of the testator.

unemployment compensation Compensation awarded to workers who have lost their jobs and cannot find other employment.

unenforceable Contract under which neither party can recover.

unfair employer practice Conduct in which an employer is prohibited from engaging.

unfair labor practice Conduct in which an employer or union is prohibited from engaging.

unfair union practice Conduct in which a union is prohibited from engaging.

Uniform Commercial Code One of the Uniform Laws, drafted by the National Conference of Commissioners on Uniform State Laws, governing commercial transactions (sales of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions).

unilateral mistake Erroneous belief on the part of only one of the parties to a contract.

union shop Employer can hire nonunion members, but such employees must then join the union.

universal life Ordinary life divided into two components, a renewable term insurance policy and an investment portfolio.

unliquidated debt Obligation that is uncertain or contested in amount.

unqualified indorsement (see **indorsement**) One that imposes liability upon the indorser.

unreasonably dangerous Danger beyond that which the ordinary consumer contemplates.

unrestrictive indorsement (see **indorsement**) One that does not attempt to restrict the rights of the indorsee.

usage of trade Any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.

usury Collectively, the laws of a jurisdiction regulating the charging of interest rates. A usurious loan is one whose interest rates are determined to be in excess of those permitted by the usury laws.

value The performance of legal consideration, the forgiveness of an antecedent debt, the giving of a negotiable instrument, or the giving of an irrevocable commitment to a third party. UCC §1-201(44).

variance A use differing from that provided in a zoning ordinance in order to avoid undue hardship.

vendee A purchaser or buyer; one to whom anything is sold. See also **vendor**.

vendor The person who transfers property by sale, particularly real estate; "seller" being more commonly used for one who sells personalty. See also **vendee**.

venue "Jurisdiction" of the court means the inherent power to decide a case, whereas "venue" designates the particular county or city in which a court with jurisdiction may hear and determine the case.

verdict The formal and unanimous decision or finding of a jury, impaneled and sworn for the trial of a cause, upon the matters or questions duly submitted to it upon the trial.

vertical privity Who is liable to the plaintiff.

vertical restraints Agreements among parties at different levels of the distribution chain.

vested Fixed; accrued; settled; absolute. To be "vested," a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from the demand of another.

vested remainder Unconditional remainder that is a fixed present interest to be enjoyed in the future.

vicarious liability Indirect legal responsibility; for example, the liability of

void Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended.

This difference separates the words "void" and "voidable": *void* in the strict sense means that an instrument or transaction is nugatory and ineffectual, so that nothing can cure it; *voidable* exists when an imperfection or defect can be cured by the act or confirmation of the person who could take advantage of it.

Frequently, the word "void" is used and construed as having the more liberal meaning of "voidable."

voidable Capable of being made void. See also **void**.

voir dire Preliminary examination of potential jurors.

voluntary Resulting from free choice. The word, especially in statutes, often implies knowledge of essential facts.

voting trust Transfer of corporate shares' voting rights to a trustee.

wager (gambling) Agreement that one party will win or lose depending upon the outcome of an event in which the only interest is the gain or loss.

waiver Terms "estoppel" and "waiver" are not synonymous; "waiver" means the voluntary, intentional relinquishment of a known right, and "estoppel" rests upon principle that, where anyone has done an act or made a statement that would be a fraud on his part to controvert or impair, because the other party has acted upon it in belief that what was done or said was true, conscience and honest dealing require that he not be permitted to repudiate his act or gainsay his statement. See also **estoppel**.

ward An infant or insane person placed by authority of law under the care of a guardian.

warehouse receipt Receipt issued by a person storing goods.

warehouse Storer of goods for compensation.

warrant, v. In contracts, to engage or promise that a certain fact or state of facts, in relation to the subject matter, is, or shall be, as it is represented to be.

In conveyancing, to assure the title to property sold, by an express covenant to that effect in the deed of conveyance.

warranty A warranty is a statement or representation made by a seller of goods, contemporaneously with and as a part of a contract of sale, though collateral to express the object of the sale, having reference to the character, quality, or title of goods, and by which the seller promises or undertakes to ensure that certain facts are or shall be as he then represents them.

The general statutory law governing warranties on sales of goods is provided in UCC §2-312 *et seq.* The three main types of warranties are (1) express warranty; (2) implied warranty of fitness; (3) implied warranty of merchantability.

warranty deed Deed in which grantor warrants good clear title. The usual covenants of title are warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title as to all claims.

Special warranty deed Seller warrants that he has not impaired title.

warranty liability Applies to persons who transfer an instrument or receive payment or acceptance.

warranty of title Obligation to convey the right to ownership without any lien.

waste Any act or omission that does permanent injury to the realty or unreasonably changes its value.

white-collar crime Corporate crime.

will A written instrument executed with the formalities required by statutes, whereby a person makes a disposition of his property to take effect after his death.

winding up To settle the accounts and liquidate the assets of a partnership or corporation, for the purpose of making distribution and terminating the concern.

without reserve Auctioneer may not withdraw the goods from the auction.

workers' compensation Compensation awarded to an employee who is injured, when the injury arose out of and in the course of his employment.

writ of certiorari Discretionary review by a higher court. See also **certiorari**.

writ of execution Order served by sheriff upon debtor demanding pay-