
Contents

Preface	<i>i</i>
Pronunciation Guide	<i>iii</i>
Key to Effective Use of This Dictionary	<i>iv</i>
Table of Abbreviations	<i>vi</i>
Table of Authorities	<i>ix</i>
Terms	1

目 录

<i>A</i>	1
<i>B</i>	55
<i>C</i>	85
<i>D</i>	169
<i>E</i>	219
<i>F</i>	257
<i>G</i>	292
<i>H</i>	304
<i>I</i>	317
<i>J</i>	360
<i>K</i>	376
<i>L</i>	377
<i>M</i>	402
<i>N</i>	439
<i>O</i>	459
<i>P</i>	474
<i>Q</i>	537
<i>R</i>	542
<i>S</i>	591
<i>T</i>	657
<i>U</i>	691
<i>V</i>	704
<i>W</i>	714
<i>X</i>	730
<i>Y</i>	730
<i>Z</i>	731

A

A. B. A. 美国律师协会
see **American Bar Association.**

ABANDONED CHILD [SPOUSE]

被遗弃的儿童(配偶)

person who has not been in contact with or received support from the parent or spouse. A court finding of child abandonment terminates parental rights and allows the child to be adopted without permission of the parents. See **desertion**. See Clark, *The Law of Domestic Relations in the United States* vol. II, 634-37 (2d ed. 1998).

ABANDONMENT 明确表示放弃对财产的权利或请求无意重新获得所有权或拥有

knowing relinquishment of one's right or claim to **property** without any future intent to again gain **title** or **possession**; "in law, is defined to be the relinquishment or surrender of rights or property by one person to another. It includes both the intention to abandon and the external act by which the intention is carried into effect. . . there must be the concurrence of the intention to abandon and the actual relinquishment." 164 S. W. 2d 225, 228. One who abandons his or her newspaper in a barbershop gives up all right and title to it; one who merely forgets to take his or her newspaper from the barbershop does not legally abandon it. A subsequent finder of property not legally abandoned must make reasonable effort to restore it to the

true owner and must relinquish it upon demand. The term applies not only to tangible property but also to such things as **copyrights**, **easements**, **leases**, and **patents**. Compare **desertion**; **discharge**; **release**; **waiver**.

ABATABLE NUISANCE 可减轻/消除的妨碍

see **nuisance** [**ABATABLE NUISANCE**].

ABATEMENT 通常的意思是减缓或减少;又意为一诉讼行为的完全终止 generally, a lessening, a reduction; also a complete termination of a **cause of action**; "in the sense of common law [it] is an entire overthrow or destruction of the suit, so that it is quashed or ended. But, in the sense of a **court of equity**, an abatement signifies only a present suspension of all proceedings in the **suit**. . . At common law a suit, when abated, is absolutely dead. But a suit in **equity**, when abated is. . . merely in a state of suspended animation, and it may be revived." 93 S. W. 164, 166. An **ABATEMENT OF A LEGACY** is the reduction in the amount or the extinction of a **legacy** to a **beneficiary** by the payment of debts owed by the grantor of that legacy, i. e., a **decedent**. AN **ABATEMENT OF TAXES** is a rebate or diminution of taxes previously assessed and/or paid. See **nuisance** [**ABATEMENT OF A NUISANCE**]; **plea** [**PLEA IN ABATEMENT**].

ABDUCTION 诱拐;劫持(广义上指的是“以武力拿走或带走”的犯罪或不法行为。带走行为可能是通过欺骗、拐诱或公开暴力)

broadly, the **criminal** or **tortious** act of "taking and carrying away by force." This

taking may be by means of **fraud**, persuasion, or open violence. Its object may be a child, ward, wife, etc., but the offense is against the family relationship and not the person taken. At **common law**, a wife could not maintain a civil action for abduction of her husband. In its most exclusive sense abduction is restricted to the taking of females for the purpose of marriage, **concubinage**, or **prostitution**. 60 A. 601, 603. In private or **civil** [as opposed to criminal] **law**, abduction is the act of taking away a man's wife by violence or by persuasion. 54 P. 847. Compare **kidnapping**.

ABET 教唆;怂恿
see **aid and abet**.

ABEYANCE 财产法中;指的是不动产所有权或世袭地产的归属待定状态 in **property**, the condition of a **freehold** or **estate in fee** when there is no presently existing person in whom it **vests**; generally, an undetermined or incomplete state of affairs.

ABILITY TO STAND TRIAL 有受审能力
see **capacity; competent**.

AB INITIO 从一开始
(*ab ĭn-ĭ'-shē-ō*)—**Lat.**: from the first act. 219 F. Supp. 274, 276. Most commonly used in reference to the validity of **contracts, statutes, estates, trespasses, marriages, and deeds** to indicate that existence, validity, etc., of such things relates back to their inception or creation; e. g., the unlawful marriage is **void ab initio**; the insurance policy is valid **ab initio**.

ABJURE 公开放弃
retract, recant, or repudiate.

ABNORMALLY DANGEROUS ACTIVITY 超常危险行为
see **ultrahazardous activity**.

ABOLISH 废除;废止;取消
to repeal, recall, or revoke, to cancel and eliminate entirely. Refers especially to things of a permanent nature such as institutions, customs, and usages, as in the abolition of slavery by the **Thirteenth Amendment** to the United States **Constitution**.

ABORIGINAL TITLE 原始权利
see **Indian law** [**INDIAN TITLE**].

ABORTION 流产;堕胎
the premature termination of a pregnancy. An intentionally induced abortion was at **common law** a **misdemeanor** and in American law a **felony** in most jurisdictions unless performed to save the life of the mother. See Perkins & Boyce, Criminal Law 186-197 (3d ed. 1982). The right of a woman to have an abortion during the early stages of her pregnancy without criminal sanctions applied to her or those who perform the abortion, and the right to have it free of unreasonable governmental restraint has now been established as part of a constitutional right of personal privacy (under the **Fourteenth Amendment's** concept of personal liberty or due process clause and not the Ninth Amendment's reservation of rights to the people). During the first trimester the state cannot constitutionally interfere with the abortion decision, which must be left to the medical judgment of the woman's physician. Dur-

ing the second trimester the state may regulate the abortion procedure in ways that are reasonably related to maternal health. During the last trimester (the stage subsequent to viability) the state "in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." *Roe v. Wade*, 410 U. S. 113, 163-64 (1973). Varied state challenges to the regulation of the abortion procedure provide numerous opportunities for the federal courts and the United States Supreme Court to continually examine issues which involve strong advocacy on both sides of the abortion debate. Subject to constitutional guidelines, abortion may still be a criminal offense and is often grouped with other homicide offenses, though it usually carries a lesser maximum penalty. See, e. g., N. Y. Penal Law §§ 125.00, 125.05, 125.40-60 (defining homicide as conduct which causes the death of a person or an unborn child with which a female has been pregnant for more than twenty-four weeks; defining justifiable abortion; creating two degrees of abortion with lesser felony designations; and proscribing self-abortion during the post-twenty-four-weeks period). Some states have enacted **trigger laws**, which automatically make abortion illegal if *Roe v. Wade* is overturned and regulation powers are given back to the states. See, e. g., N. D. Cent. Code § 12.1-31-12.

ABRIDGE 剥夺权利

to lessen, to shorten, to condense; a condensation of the whole, not a mere parti-

tion of the whole. An abridgment shortens a version of a work while retaining the general sense of the original. Legal circles favor the spelling of abridgment over abridgement.

ABROGATE [ABROGATION]

废除;撤销;取消

"to annul, destroy, revoke, or cancel; to put an end to; to do away with; to set aside," 209 N. E. 2d 172, 174; to make a law void by legislative repeal.

ABSCOND 逃避债务

to travel covertly out of the **jurisdiction** of the courts, or to conceal oneself in order to avoid their **process**. 62 N. W. 217, 218. An absconding **debtor** is one who, with intent to avoid their **creditors**, conceals or withdraws himself from within the relevant jurisdiction for the purpose of going beyond the reach of process. An absconding debtor successfully evades the **service of process**. 32 A. 7. See **jump bail**.

ABSENTIA 参见 IN ABSENTIA

see **in absentia**.

ABSENT WITHOUT LEAVE 参见 DESERTION (ABSENT WITHOUT LEAVE)

see **desertion** [ABSENT WITHOUT LEAVE].

ABSOLUTE LIABILITY 绝对责任; 严格责任

see **strict liability**.

ABSOLUTE SALE 无条件销售

see **sale** [ABSOLUTE SALE].

ABSQUE HOC 如果没有这些

(äb'-skwā hōc)—Lat. : but for this; apart

from this; if it had not been for this. It is used as a technical word in **pleading** for purposes of **denial** of the **allegations** made. See **traverse** [SPECIAL TRAV-ERSE].

ABSTENTION (DOCTRINE) 放弃管辖权 (原则)

a policy adopted by the federal courts whereby the **district court** may decline to exercise its **jurisdiction** and defer to a state court the resolution of a federal constitutional question, pending the outcome in a state court proceeding of state law **issues** that might avoid a serious constitutional question. When the court defers decision in this manner, it retains jurisdiction and may decide the federal constitutional question if the plaintiff is not satisfied with the state court outcome. Where resolution of the federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law, abstention may be proper in order to avoid unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional **adjudication**. 380 U. S. 528, 534.

A second variant of abstention (and a form of abstention required by some statutes) occurs when the federal court refuses to exercise jurisdiction altogether because the issues presented seem to the court more appropriate for state court resolution. In these instances the abstaining federal court actually "relinquishes" its jurisdiction to the state courts and the doctrine is more appropriately termed relinquishment. An example of this form of absten-

tion is the refusal of the federal courts in the interests of **comity** to enjoin state court criminal proceedings. See 401 U. S. 37. See **federalism**.

ABSTRACT OF RECORD 案情摘要
a complete history in short, abbreviated form of the **case** as found in the **record**. Its purpose is "to bring before the **appellate court** in abbreviated form an accurate and authentic history of all the **proceedings** in the case as they were had in the course of the **trial** below." 164 S. W. 2d 201, 207. "It would have to be complete enough to show that the questions presented for review [by the appellate court] have been properly preserved in the case." 231 S. W. 70.

ABSTRACT OF TITLE

产权契据摘要

a short history of **title** to land; "a summary or epitome of the facts relied on as evidence of **title**, [which] must contain a note of all **conveyances**, transfers, or other facts relied on as evidences of the **claimant's** title, together with all such facts appearing of record as may impair title. . . . It should contain a full summary of all **grants**, **conveyances**, **wills** and all records and judicial proceedings whereby the title is in any way affected, and all **encumbrances** and **liens** of record, and show whether they have been released or not." 107 N. E. 180, 183. See **chain of title**.

ABUSE 虐待; 性侵害

harm; injury; damage; neglect; mental, physical, and/or emotional mistreatment. See **child abuse**; **cruelty**; **domestic violence**; **endangering**; **rape**. Also, improper

use or exercise. See **abuse of discretion**; **abuse of process**.

ABUSE EXCUSE 减轻虐待/侵害责任的借口

claim which attempts to justify a person's improper action based upon that person's history of victimization. May be used to negate the **mens rea** of a crime and/or to **mitigate** punishment. See **battered person's syndrome**.

ABUSE OF DISCRETION 自由裁量权滥用

a standard of review applied by appellate courts in reviewing the exercise of **discretion** by trial courts and administrative agencies and persons; a rationale used by reviewing courts to upset determinations made by trial courts when such determinations are wholly inconsistent with the facts and circumstances before the court and the deductions that can reasonably be made from the facts and circumstances, see 251 N. E. 2d 468, 471; any "unreasonable, unconscionable [or] arbitrary action taken without proper consideration of the facts and law pertaining to the matter submitted," 458 P. 2d 336, 338.

The "abuse of discretion" standard of review is also used in administrative settings. Thus where an agency has discretionary authority to revoke a license, the extent of that discretion is limited, and a serious or gross abuse of that discretion will provoke correction by a reviewing court. Administrative officials such as prosecutors have a very broad discretion and it is generally very difficult to upset their exercise of discretion on the grounds of arbitrary, capricious, or unfair decision-

making. Davis, Administrative Law §§ 28.04, 28.06 (3d ed. 1994). See **discretion**.

ABUSE OF PROCESS (刑事或民事) 诉讼程序不正确适用

employment of the criminal or civil **process** for a use other than one which is intended by law; "the improper use of process after it has been issued, that is, a perversion of it." 32 A. 2d 413, 415. "Malicious use of civil process has to do with the wrongful initiation of such process, while abuse of civil process is concerned with a perversion of a process after it is issued." Id.

ABUSE, SEXUAL 性侵害

see **rape** [SEXUAL ABUSE].

ABUT [ABUTTING] 邻接; 毗连

to adjoin; to cease at point of contact; to touch boundaries; to border on.

ACCELERATED COST RECOVERY SYSTEM 加速成本回收制度

see **depreciation** [ACCELERATED COST RECOVERY SYSTEM].

ACCELERATION 财产权的提前享有 the hastening of the time for enjoyment of an **estate** or a property right which would otherwise have been postponed to a later time. This term is applied to both the **vesting** of a **remainder** due to the premature termination of a **preceding estate** and to clauses [commonly found in **mortgage** agreements called **acceleration clauses**, stipulating that an entire debt may be regarded as due upon the default of a single **installment**, or other duty of the borrower].

ACCELERATION CLAUSE 加速条款;提前偿付条款

a provision in a **contract** or document establishing that upon the happening of a certain event, a party's expected interest in the subject property will become prematurely **vested**. For example, "a stipulation in a **mortgage** that, if the **mortgagor** shall fail to pay any **note** or **installment** of **interest**, or neglect to pay taxes or special assessments, the entire indebtedness shall become due, and payable, or that the **mortgagee** may at his option declare it to be due and payable," 9 S. W. 2d 3, 4; however, "equitable principles may be invoked to relieve a mortgagor from acceleration of the maturity of the debt and from **foreclosure** of the mortgage." 118 F. Supp. 401, 411. In the law of contracts, such a clause is found often in installment contracts and can cause an entire debt to become due upon failure to pay an installment as agreed and can cause a **judgment** for the installment barring an **action** for the balance of the debt. Corbin, Contracts § 950 (1952); see U. C. C. § 1-208.

ACCEPTABLE USE POLICY 许可使用(网络、网址等)的制度

regulations establishing who may use a network, website, or service's resources; the purposes allowed; and the privacy and security rules involved.

ACCEPTANCE 接受;承诺;承兑

act of voluntarily receiving something or of a voluntary agreement to certain terms or conditions; implies the right to reject. In **contract** law, acceptance is consent to the terms of an **offer**, which consent creates a contract. See **power of acceptance**. In

commercial law, acceptance of a **draft** is the **drawee's** signed engagement to honor the draft. The acceptance must be written on the draft. U. C. C. § 3-410. "Acceptance" by a bank of a check or other **negotiable instrument** is a formal procedure whereby the bank on which the check is drawn promises to honor the draft by paying the **payee** named on the check. In the law of **sales**, acceptance occurs when the buyer takes goods as his own. U. C. C. § 2-606, comment 1. In **property** law, acceptance is an element essential to the completion of a **gift inter vivos**; it may be actual or implied and may also be evidenced by words and conduct; it need not be contemporaneous with delivery but may be manifested subsequently. See 36 F. Supp. 556, 564.

ACCEPTOR 承兑票据的人(或银行)

individual or institution that assumes an obligation to pay by signing for or consenting to a **check** or **draft**. Also spelled "accepter." See **drawee**.

ACCESS 探望权;访问(数据)

the opportunity to approach, communicate, or pass to and from without obstruction as with an **easement**. See Boyer, Hovenkamp, and Kurtz, *The Law of Property: An Introductory Survey* 308-11 (4th ed. 1991). Also refers to the opportunity for sexual intercourse. A husband's nonaccess to his wife may be a defense to a **paternity** suit as may "multiple access" be the defense of several lovers in a paternity suit. See Clark, *The Law of Domestic Relations in the United States* vol. I, 331-32 (2d ed. 1998). The absence of opportunity for copying may provide a nonaccess

defense to a **plagiarism** action. 11 F. R. D. 136. The right of access to **public records** includes such laws as the **Freedom of Information Act**. 5 U. S. C. § 552.

ACCESSION 增加物; 添加物

something added. Generally signifies acquisition of **title** to personalty by adding labor on it which converts it into an entirely different thing or by incorporation of property into a union with other property. 590 S. W. 2d. 607, 609. Accession is a right, derived from the **civil law**, to all of that which one's property produces, and to that which is united to it either naturally or artificially. The civil law required the thing to be changed completely, as grapes into wine, before the original owner could lose title. By **common law** the article in its altered form is still the property of the owner of the original material if he or she can prove the identity of the original material, as if leather be made into shoes. 4 Am. Dec. 368.

ACCESSORY 同谋; 从犯

one who aids or contributes in a secondary way or assists in or contributes to crime as a subordinate. See 216 So. 2d 829, 831. Mere silence or approval of the commission of crime does not incur accessorial liability, 81 Mo. 483, although the failure to report the commission of a felony is sometimes itself a crime. See **misprision**. An accessory does acts which **facilitate** others in the commission or attempted commission of crime or in avoiding apprehension for crime. See also **accomplice**; **aid and abet**; **conspiracy**. Compare **principal**.

ACCESSORY AFTER THE FACT 事后从犯

those who receive, comfort or assist a fel-

on knowing that he or she has committed a **felony** or is sought in connection with the commission or attempted commission of a felony. See 234 A. 2d 284, 285. The term thus applies to one who obstructs justice by giving comfort or assistance to a criminal offender in an attempt to hinder or prevent his or her apprehension or punishment. 378 F. 2d 540, 542.

ACCESSORY BEFORE THE FACT 事前从犯

accessory before the fact one who procures, counsels, or commands the deed perpetrated, but who is not present, actively or constructively, at such perpetration. See 282 A. 2d 154, 157.

ACCIDENT 意外事故

an unforeseen, unexpected event; an occurrence by chance and not by design. In the context of an automobile insurance policy, the term includes any event that occurs unintentionally, even if due to **negligence** rather than to forces beyond anyone's control. See 62 S. W. 2d 197. An unavoidable accident is one that is not the product of fault of another such as one caused by an **act of God** [**nature**; **Providence**]. See 196 S. E. 915, 918.

ACCOMMODATED PARTY 参见 ACCOMMODATION MAKER see **accommodation maker** [**party**] [**ACCOMMODATED PARTY**].

ACCOMMODATION INDORSEMENT (票据) 通融背书 see **indorsement**.

ACCOMMODATION MAKER [**PARTY**] 出期票人

one who signs a **note** as acceptor, **maker**,

or **indorser** without recovering value therefore, or any compensation, benefit, or **consideration** directly or indirectly by way of the transaction of which the note is a part. The accommodation maker, as **surety**, remains **liable** for the note, even though the accommodation maker receives no consideration from the ACCOMMODATED PARTY, the person receiving the favor, also known as the **payee**. See 87 N. W. 2d 299, 302. The accommodation maker is, in effect, gratuitously guaranteeing the debt of the accommodated party. However, the transaction must be one primarily for the benefit of the accommodated party. See 264 N. W. 875, 876. If the accommodation maker is obligated to honor the accommodation contract, the maker "has a right of recourse on the instrument against" the accommodated party. U. C. C. § 3-415(5). If both the accommodation maker and the accommodated party jointly sign the note, they are known as **co-makers**, each fully liable if one **defaults**.

ACCOMPLICE 同谋者;共犯

an individual who voluntarily engages with another in the commission or attempted commission of a crime, see 165 N. E. 2d 814; one who is liable for the identical offense charged against the **defendant**, see 233 P. 2d 347; one who knowingly, voluntarily, or purposefully and with common intent with the principal offender unites in the commission or attempted commission of a crime. Mere presence combined with knowledge that crime is about to transpire, without active mental or physical contribution, does not make one an accomplice. Id. 348, 349. For example, undercover agents are not accomplices.

See 478 S. W. 2d 450, 451; 473 S. W. 2d 19, 20. Essential to accomplice liability is a shared, common **mens rea** and criminal purpose between **agent** and **principal**. Compare **accessory**; **aid and abet**; **conspiracy**.

ACCORD 正式协议;条约

agreement; "an agreement whereby one of the parties undertakes to give or perform, and the others to accept, in satisfaction of a **claim**, **liquidated** [certain] or unliquidated [in dispute] and arising either from **contract** or from **tort**, something other than or different from what he is, or considers himself, entitled to." 408 P. 2d 712, 713. "**Satisfaction** takes place when the accord is executed," 193 A. 2d 601, 602; after which there has been an "**accord and satisfaction**." See **novation**; **settlement**.

ACCORD AND SATISFACTION 以减少债务的协议清偿

payment of money, or other thing of value usually less than the amount owed or demanded, in exchange for **extinguishment** of the **debt**. It amounts to "something other than strict **performance** or payment". An agreement, whether actual or implied, must acknowledge that the acceptance of the smaller sum is meant to discharge the obligation to pay the larger sum.

ACCOUNT 账目

"a detailed statement of the mutual demand in the nature of debt and credit between parties, arising out of contracts or some fiduciary relation." 343 S. W. 2d 522, 524. In general business terminology, a particular client or customer. See **capital account**; **discretionary account**;

joint account; open account.

ACCOUNT DEBTOR 债务人

person who is obligated on an account. U. C. C. § 9-105(1)(a).

ACCOUNT PAYABLE 应付账款

the amount owed by a business to its suppliers and other regular trading partners.

ACCOUNT RECEIVABLE 应收账款

account receivable amounts owing on open account. Running accounts that are usually disclosed in the **creditor's** account books, representing unsettled **claims** and transactions not reduced to writing. 327 F. Supp. 425, 427. In neither commercial nor legal contexts does an account receivable embrace an isolated transaction wholly outside of the account creditor's normal business dealings. *Id.* The Uniform Commercial Code has rejected "exact and detailed" descriptions in favor of those that reasonably identify what is described. All that is required under the code to describe an accounts receivable is that the financing statement be sufficiently descriptive so as reasonably to generate further inquiry. The code does not define "accounts receivable," but in the official comments to the code "accounts" is defined as "ordinary commercial accounts receivable." 458 F.2d 435, 437.

CAPITAL ACCOUNT 资本账户

see **capital** [CAPITAL ACCOUNTS].

DISCRETIONARY ACCOUNT 全权代客买卖账户

DISCRETIONARY ACCOUNT see **discretion** [DISCRETIONARY ACCOUNT].

ACCOUNTING, ACTION FOR (衡平法) 要求对账目进行管理的诉讼

refers to an action, usually brought in **equity**, to secure a formal statement of account from one partner to others in order to obtain a judicial determination of the rights of the parties in a shared asset. If one partner feels another has been diverting funds or otherwise cheating him or her, he or she may bring an action for an accounting and ask for the appointment of a temporary **receiver**.

Sometimes an equity judge will appoint a **master** to perform the accounting. 1 Am. Jur. 2d, Accounting § 44.

ACCOUNTING METHOD 会计方法; 核算法

the method by which a business (**corporation, partnership or sole proprietorship**) keeps its books and records for purposes of computing **income** and **deductions** and determining **taxable income**. Generally, the method of accounting affects the timing of an item of income or deduction. The two major methods of accounting are **accrual** and **cash**.

ACCRUAL METHOD (会计) 应计法

an accounting method under which income is subject to tax after all events have occurred which fix the right to receive such income and deductions are allowed when the obligation to pay similarly becomes fixed, regardless of when the income is actually received or when the obligation is actually paid. Treas. Reg. § 1.451-1(a) and § 1.461-1(a)(2). The accrual method must be utilized by any business taxpayer which has **inventory**. Treas. Reg. § 1.446-1(c)(2)(i).

CASH METHOD 现金收付法

an accounting method under which income is subject to tax when actually or constructively received and deductions are allowed when actually paid. Treas. Reg. § 1.446-1 (c) (1) (i) and § 1.451-1.

INSTALLMENT METHOD 分期付款法

a method of accounting which may be elected by a **taxpayer** who is either on the cash or the accrual method of accounting which allows the taxpayer to postpone the **recognition** of gain from the **sale or exchange** of assets if at least one payment is to be received after the close of the year of sale. IRC § 453. If this method is utilized, a pro-rata portion of the payment received each year reduces the taxpayer's **basis** and the remainder is taxed as gain from the sale or exchange of the asset.

ACCREDITED INVESTOR 官方认可或授权的投资者

knowledgeable and sophisticated persons or institutions who qualify to purchase securities in transactions exempt from registration under the Securities Act of 1933. See **private offering**.

ACCRETION (财产) 添附

the adding on or adhering of something to property; a means by which a property owner gains ownership of something additional. It usually refers to "the gradual and imperceptible addition of sediment to the shore by the action of water; it is created by operation of natural causes." 198 P.2d 769, 772. It differs from **avulsion** which "is a sudden and perceptible loss or addition to land by the action of water." 161

F. Supp. 25, 29. See **alluvion**; **avulsion**; **reliction**.

In the law of **succession**, accretions said to take place when a co-heir or co-legatee dies before the property **vests**, or rejects the **inheritance** or **legacy**, or fails to comply with a **condition**, or becomes incapable of taking. The result is that the other heirs or legatees can share in his or her part. See 2 P.418, 440.

In situations involving a **trust**, the term refers to any addition to the principal or income that results from an extraordinary occurrence, that is, an occurrence which is foreseeable but which rarely happens. See 213 N. W. 320, 322 and 148 F.2d 503, 506.

ACCRUAL METHOD (会计) 应计法
see **accounting method** [**ACCRUAL METHOD**].**ACCRUE (钱款、账目) 积累、增长**

generally, to accumulate, to happen, to come into fact or existence; as to a **cause of action**, to come into existence as an enforceable claim; as to a debt or bank account, the coming due of **interest** on **principal** sum. The point at which a cause of action is said to *accrue* also affects the length of time that a prospective plaintiff may wait to bring a suit under the **statute of limitations**.

ACCUMULATED DEPRECIATION
累积折旧

the total **depreciation** charged against all productive **assets** as stated on the **balance sheet**. The charge is made to allow realistic reduction in the value of productive assets and to allow taxfree recovery of the original investment in assets.

ACCUMULATED EARNINGS AND PROFITS 累计盈余

see **earnings and profits** [accumulated earnings and profits].

ACCUSATION 指控;控告

a **charge** against a person or corporation; "in its broadest sense it includes **indictment, presentment, information** and any other form in which a charge of crime or offense can be made against an individual," 151 A.2d 127, 129; formal charge of having committed a criminal offense, made against a person in accordance with established legal **procedure** and not involving the **grand jury**.

ACCUSATORY INSTRUMENT 控告起诉书

refers to the initial **pleading** or other paper which forms the procedural basis for a criminal charge. It may take the form of an **indictment, information, or accusation**. If the accusatory instrument is defective, the entire proceeding will be rendered null and void.

ACCUSE 指控;控告

to directly and formally institute legal **proceedings** against a person, charging that he or she has committed an offense cognizable at law; to **prosecute**; to charge with an offense judicially or by public **process**. See 73 So. 225, 228.

ACCUSED 被告

person against whom a criminal proceeding is initiated. See 73 So. 225, 228. *Accused* and **defendant** refer to one who in a legal manner is held to answer for an offense at any stage of the proceedings, or a-

gainst whom a complaint in any lawful manner is made, charging an offense including all proceedings from the order of arrest to final execution. A defendant is not **accused** until charged with the offense or until he or she becomes subject to actual restraint by **arrest**. See 509 P.2d 549, 551. The point at which a defendant is *accused* is important in determining when certain constitutional rights attach.

ACKNOWLEDGMENT 承认(真实性或责任)

affirmation, admission, or declaration recognizing ownership, indicating authenticity, accepting responsibility, or undertaking an obligation to do something, such as pay a debt. Legal circles favor the spelling as acknowledgment instead of acknowledgement.

ACLU 美国公民自由协会

see **American Civil Liberties Union**.

A COELO USQUE AD CENTRUM 土地所有者的权利范围

(ä kō-ä'-iō ūs'-kwā äd sēn 'trūm)—Lat. :from the sky[heavens]all the way to the center of the earth; a very old **property** maxim which marked the boundaries within which an owner owned his property. This maxim no longer strictly applies because the owner of property in modern times owns subject to the rights of airplanes and oil and gas exploration. See Boyer, Hovenkamp, and Kurtz, *The Law of Property: An Introductory Survey* (4th ed. 1991).

ACQUIESCENCE 默许;默从

conduct that may imply consent; a tacit acceptance, often through silence when some objection ought to be forthcoming.

26 P. 898. Thus, if one makes a statement and another does not respond negatively, acquiescence may be inferred. An **estoppel** may be created in appropriate circumstances in this manner. See 94 N. E. 2d 479. Compare **laches** which implies a neglect to do that which we would expect another to do for his or her own benefit. See 5 A. 2d 325.

ACQUIRE 获得(财产等)

to gain by any means; to obtain by any endeavor such as practice, purchase, or investment. In the law of contracts, to become the owner of property. To make something one's own. Implies some positive action as opposed to a more passive obtaining such as by an accrual. See **accrue**.

ACQUIRED CORPORATION 被收购的公司

see **corporation** [ACQUIRED CORPORATION].

ACQUIRING CORPORATION 收购公司

see **corporation** [ACQUIRING CORPORATION].

ACQUIT 宣告无罪

to set free or judicially discharge from an **accusation** of suspicion of guilt. See 65 N. Y. S. 1062, 1065. An individual is acquitted when, at the close of **trial**, either a jury or court determines that the person has been absolved of the charges which were the bases of the **action**; a **verdict of "not guilty"** acquits the defendant and prevents his or her retrial under the principles of **double jeopardy**.

In **contract** terminology, "to acquit"

meant to release from a **debt**, duty or charge. See 26 Wend. 383, 400.

ACQUITTAL 宣判无罪; 无罪开释

one who is acquitted receives an acquittal, which broadly means that the individual is released or discharged without any further prosecution for the same act or transaction.

A. C. R. S. 加速成本回收制度

see **depreciation** [ACCELERATED COST RECOVERY SYSTEM].

ACT 公然行为

see **overt act**. See also **wrongful act**.

ACTION 诉讼; 诉权

(*äk'-tē-ō*) doing, performance, action, activity; also, **proceedings**; **lawsuit**; **process**; **action**; permission for a suit; right or **cause of action**.

ACTION (AT LAW) (法律) 起诉

a **judicial** proceeding whereby one party **prosecutes** another for a wrong done, or for protection of a right or prevention of a wrong; at common law, to be distinguished from an action in equity which could not be brought before the law courts but only before a court of **equity**. See **collusive action**; **derivative action**; **penal action**.

ACTIONABLE 可起诉的

giving rise to a **cause of action**; thus, it refers to wrongful conduct which may form the basis of a civil **action**, as in ACTIONABLE NEGLIGENCE which is the **breach** or non-performance of a **legal duty** through neglect or carelessness, resulting in damage or injury to another. See 49 A. 673.

ACTIONABLE PER QUOD 可起诉的是由于;归咎于……;可起诉的
see **per quod** [**ACTIONABLE PER QUOD**]

ACTIONABLE PER SE 自身可诉性
see **per se** [**ACTIONABLE PER SE**].

ACTIONABLE TORT 可起诉的侵权行为
to constitute an actionable **tort** there must be a legal duty imposed by statute or otherwise owing by defendant to the one injured. 195 P. 2d 501, 511.

ACTION EX CONTRACTU 根据契约的诉讼
see **ex contractu**.

ACTION EX DELICTO 根据侵权行为的诉讼
(*ĕx dĕl-ik'-tō*)—Lat. : **cause of action** which arises out of fault, misconduct, or **malfeasance**, 100 S. W. 2d 687, 689; usually refers to an action in **tort**, arising from breach of a legal duty not related to a **contract**, rather than one based on a contract. “If the cause of action given expression in the **complaint** arises from a **breach of promise**, the action is **EX CONTRACTU** [**but**] if that cause of action arises from a breach of duty growing out of the contract, it is in form ‘*ex delicto*’.” 120 So. 153, 154. See also **delictum**.

ACTION FOR ACCOUNTING 参见 **ACCOUNTING**, **ACTION FOR**
see **accounting**, **action for**.

ACTION FOR POSSESSION 欲取得所有权的诉讼
see **possessory action**.

ACTION IN CASE 案内诉讼;指侵权导致的非直接损害诉讼
see **trespass** [**TRESPASS ON THE CASE**].

ACTIO NON
被告对原告的不履行抗辩
(*äk 'tē-ō nŏn*) in **pleading**, a nonperformance, nonfeasance; a special plea by a defendant against the plaintiff. Also, a **nonsuit**.

ACTIONS IN PERSONAM 对人诉讼
see in **personam**; **jurisdiction**.

ACTIONS IN REM 对物诉讼
see in **rem**; **jurisdiction**.

ACTIONS QUASI IN REM
准物权诉讼
see **jurisdiction**; **quasi in rem**.

ACTIVE CONCEALMENT 故意隐瞒
see **concealment** [**ACTIVE CONCEALMENT**].

ACTIVE EUTHANASIA 积极安乐死;主动安乐死
see **euthanasia** [**ACTIVE EUTHANASIA**].

ACTIVISM 能动主义
see **judicial activism**.

ACT OF GOD [**NATURE**; **PROVIDENCE**] 不可抗力(天意)
manifestation of the forces of nature which are unpredictable and difficult to anticipate; “the result of the direct, immediate and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of man and without human intervention, [**which**] is of such character that it could not have been prevented or avoided by foresight or prudence. Examples are tempests, lightning, earthquakes, and a

sudden illness or death of a person.” 226 A. 2d 160, 162. In law of torts, proof that an Act of God was the sole or proximate **cause** of injury is an **affirmative defense** to an action for **negligence**. An intervening Act of God generally will not excuse an absolute contractual **duty** in the absence of statutory or contractual language to the contrary. 244 F. 2d 565. The law here is generally governed by the law of **impossibility**.

ACTUAL AUTHORITY 事实授权

see **agency**; **authority** [ACTUAL AUTHORITY].

ACTUAL BAILMENT 事实上的寄托买卖

see **bailment** [ACTUAL BAILMENT].

ACTUAL CASH VALUE

实际现金价值

see **market value**.

ACTUAL DAMAGES

实际损害赔偿金

see **damages** [ACTUAL DAMAGES].

ACTUAL EVICTION 收回房舍

see **eviction** [ACTUAL EVICTION].

ACTUAL NOTICE 事实上的告知

see **notice** [ACTUAL NOTICE].

ACTUAL POSSESSION 实际所有权

see **possession** [ACTUAL POSSESSION].

ACTUAL VALUE 实际价值

see **market value**.

ACTUARY 保险精算师

one who computes various insurance and property costs; especially, one who calculates the cost of life insurance risks and

insurance premiums.

ACTUS REUS

犯罪行为;客观构成要件

(*äkt'-ūs rä'-ūs*)—Lat. ;loosely, the criminal act; but the term more properly refers to the “guilty act” or the “deed of crime.”

Every criminal offense has two components: one of these is objective, the other is subjective; one is physical, the other is mental; one is the **actus reus**, the other is the **mens rea**. The **actus reus** generally differs from crime to crime. In **murder** it is **homicide**; in **burglary** it is the nocturnal breaking into the dwelling of another; in uttering a forged **instrument** it is the act of offering as good an instrument which is actually false. In like manner the **mens rea** differs from crime to crime. In murder it is **malice aforethought**; in burglary it is the intent to commit a **felony**; in uttering a forged instrument it is “knowledge” that the instrument is false plus an intent to defraud. Perkins & Boyce, Criminal Law 830-831 (3d ed. 1982). The **actus reus** must be causally related to the **mens rea** for a crime to occur: “An evil intention and an unlawful action must concur in order to constitute a crime.” 93 N. E. 249. Although it is frequently said that no **mens rea** is required for a **strict liability** offense, the **actus reus** alone being sufficient (see e. g. , 361 U. S. 147, 150 and 342 U. S. 246, 256), it is more useful to identify a special **mens rea** for the civil offense that recognizes the low level of **culpability** connected with a strict or civil offense. As to the act being sufficient even in the **strict liability** setting, a “guilty act” (as opposed to a coerced act for example) would seem required. Hall, Gener-

al Principles of Criminal Law 222-27 (2d ed. 1960). See **corpus delicti**.

ADA 美国残疾人法;美国残疾人法案
see **Americans with Disabilities Act**
[**ADA**].

AD DAMNUM

主张一定数额的赔偿金

(*äd däm'-nũm*)—Lat. : the amount of **damages** demanded. 7 A. 391, 392. Under **common law**, in a **pleading** it fixed the amount beyond which a party could not recover on the **trial** of his **action**. 68 N. W. 2d 500, 506. However, the demand for relief has lost much of its significance since many modern pleading systems permit the court to “grant the relief to which the [prevailing party] is entitled, even if the party has not demanded such relief in his pleadings.” Fed. R. Civ. P. § 4c. In a **complaint** it is the claim for damages. 55 A. 177, 179.

ADDENDUM 附加物

something added; a supplemental section of a document containing material added after the document was prepared. It may be executed simultaneously or at a later time.

ADDITUR 对陪审员授予的原始赔偿数量进行增加

(*äd'-dĩ-tũr*)—Lat. : it is increased. An increase by the court in the amount of **damages** awarded by the **jury**. This is a power vested in a **trial court** to assess damages and to increase an inadequate award as a condition of the denial of a **motion** by the **plaintiff** for a new trial. It cannot be done without the **defendant's** consent as this would impair his or her

right to a jury trial on the question of damages. See 226 P. 2d 677. Increases in jury awards within the federal system are not permitted in **tort** claims. 293 U. S. 474. Compare **remittitur**; **set-off**.

ADEEM 废止;撤销

see **ademption**.

ADEMPITION 撤销遗嘱

removal or extinction of a **legacy**; a taking away; one of the ways in which a **devise** or **bequest** is adeemed is the extinction or withdrawal of the disposition by some act of the **testator** clearly indicating an intent to revoke it. In the case of a specific legacy, **ademption** may be effected by the testator's **inter vivos gift** of the property devised or bequeathed and/or the existence of attendant circumstances that render it impossible to effect the transfer or payment as directed by the **will**. See 167 S. W. 2d 345, 348.

AD FEMINAM

对人(妇女)不对事的

see **ad hominem** [AD FEMINAM].

ADHESION CONTRACT 附合契约;
服从契约

a contract so heavily restrictive of one party, while so non-restrictive of another that doubts arise as to its representation as a voluntary and uncoerced agreement; implies a grave inequality of bargaining power. The concept often arises in the context of “standard-form printed contracts prepared by one party and submitted to the other on a ‘take it or leave it’ basis. The law has recognized there is often no true equality of bargaining power in such con-